

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE
3 GREENEVILLE

4 UNITED STATES OF AMERICA, DOCKET NO. CR-2-19-14
5 GOVERNMENT, .
6 VS. .
7 XIAORONG YOU, .
8 DEFENDANT. .
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11 TESTIMONY OF THOMAS R. MALLEN
12 BEFORE THE HONORABLE J. RONNIE GREER
13 UNITED STATES DISTRICT JUDGE, AND A JURY
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1 APPEARANCES:

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22 COURT REPORTER: KAREN J. BRADLEY
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25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT
PRODUCED BY COMPUTER.

1 MR. HUNTER: YOUR HONOR, THE UNITED STATES
2 CALLS TOM MALLEN.

3 THOMAS R. MALLEN, GOVERNMENT'S WITNESS, SWORN

4 THE COURT: MR. MALLEN, WHILE YOU'RE ANSWERING
5 QUESTIONS, YOU MAY REMOVE THE MASK; AND SPEAK INTO THE
6 MICROPHONE, PLEASE.

7 A. YES, YOUR HONOR.

8 THE COURT: YOU MAY PROCEED.

9 DIRECT EXAMINATION

10 BY MR. HUNTER:

11 Q. GOOD MORNING, MR. MALLEN.

12 A. GOOD MORNING.

13 Q. WOULD YOU STATE AND SPELL YOUR NAME FOR THE RECORD.

14 A. THOMAS R. MALLEN, T H O M A S, R, M A L L E N.

15 Q. WHERE DO YOU LIVE?

16 A. I LIVE IN ZELIENOPLE, PENNSYLVANIA.

17 COURT REPORTER: WAIT A MINUTE. WHAT'S THE
18 NAME OF THE TOWN?

19 A. ZELIENOPLE. I'LL SPELL IT, ZELIENOPLE,
20 Z E L I E N O P L E.

21 Q. WHO DO YOU WORK FOR?

22 A. I WORK FOR SHERWIN-WILLIAMS.

23 Q. WHAT'S YOUR POSITION AT SHERWIN-WILLIAMS?

24 A. I'M THE VICE-PRESIDENT OF COMPLIANCE AND TECHNOLOGY
25 MARKETING FOR THE PACKAGING GROUP.

1 Q. AND ARE YOU FAMILIAR WITH THE COMPANY VALSPAR?

2 A. YES.

3 Q. WHAT IS VALSPAR, AND HOW DOES THAT RELATE TO
4 SHERWIN-WILLIAMS?

5 A. SO IN JUNE 1ST OF 2017 SHERWIN-WILLIAMS ACQUIRED
6 VALSPAR, PART OF WHICH WAS THE PACKAGING GROUP WHICH IS
7 WHERE I WORKED.

8 Q. AND DID YOU COME OVER WITH THE VALSPAR
9 ACQUISITION?

10 A. YES.

11 Q. CAN YOU DESCRIBE YOUR ROLE NOW AT
12 SHERWIN-WILLIAMS?

13 A. SO I MAKE SURE THAT THE PRODUCTS THAT WE PUT INTO
14 THE MARKETPLACE ARE COMPLIANT WITH ALL REGULATORY AGENCY
15 REQUIREMENTS AROUND THE WORLD, AND I ALSO AS PART OF MY
16 TECHNOLOGY MARKETING ROLE REACH OUT TO STAKEHOLDERS IN
17 SOCIETY AND HELP THEM UNDERSTAND THE BENEFITS OF THE
18 TECHNOLOGY AND ITS CLEARANCES WITH THE REGULATORY
19 AGENCIES.

20 Q. AND AS PART OF THAT ROLE ARE YOU FAMILIAR WITH THE
21 CHEMISTRIES OF COATING AND COATINGS AND THE DEVELOPMENTS
22 OF COATINGS FOR THE INSIDE OF CANS?

23 A. YES, I AM.

24 Q. AND HOW LONG HAVE YOU WORKED AT SHERWIN-WILLIAMS/
25 VALSPAR?

1 A. THIRTY-TWO AND A HALF YEARS.

2 Q. DID YOU START WORKING THERE AFTER YOU GOT OUT OF
3 COLLEGE?

4 A. NO.

5 Q. WHERE DID YOU WORK AFTER YOU GOT OUT OF COLLEGE?

6 A. SO I HAD A JOB WORKING FOR ARCHER-DANIELS-MIDLAND,
7 WHICH IS A COMMODITY FOOD MANUFACTURER, AND THEN I WENT TO
8 THE UNIVERSITY OF PITTSBURGH FOR A PH.D. IN ORGANIC
9 CHEMISTRY. I THEN WORKED FOR CALGON FOR A SHORT PERIOD OF
10 TIME IN THEIR PILOT PLANT AREA. I THEN WORKED FOR A
11 COUPLE OF COMPANIES THAT WERE WORKING ON SUPER FUND SITES
12 AND USING ANALYTICAL CHEMISTRY TO DETERMINE WHAT KIND OF
13 REMEDIATION WAS NECESSARY ON THESE SUPER FUND SITES.

14 Q. WHAT'S YOUR HIGHEST LEVEL OF EDUCATION?

15 A. MASTER'S DEGREE.

16 Q. WHERE DID YOU GET THAT?

17 A. DUQUESNE UNIVERSITY.

18 Q. AND WHAT WAS YOUR BACHELOR'S DEGREE IN?

19 A. CHEMISTRY.

20 Q. AND YOUR MASTER'S WAS ALSO IN CHEMISTRY?

21 A. YES.

22 Q. WHEN DID YOU START WORKING THEN AT VALSPAR?

23 A. STARTED WORKING OCTOBER OF 1988.

24 Q. CAN YOU TAKE US THROUGH THE ROLES AND EXPERIENCES
25 YOU'VE HAD AT VALSPAR SINCE THAT TIME?

1 A. SURE.

2 Q. JUST BRIEFLY.

3 A. SO I STARTED OUT AS A SUPERVISOR IN THE ANALYTICAL
4 LABORATORY GROUP IN PITTSBURGH, I SPENT SEVEN YEARS
5 WORKING ON THOSE ACTIVITIES, INCLUDING SPECIAL PROJECTS
6 WITH CUSTOMERS. I THEN TRANSFERRED INTO THE RESIN
7 RESEARCH GROUP WHERE I HAD PROJECTS TO DEVELOP NEW
8 CHEMISTRIES FOR RESINS AND POLYMERS THAT WOULD BE USED IN
9 OUR PACKAGING COATINGS. AFTER A YEAR IN THAT POSITION, I
10 WAS PROMOTED TO THE MANAGER OF THAT POSITION, OF THAT
11 GROUP, AND SUBSEQUENTLY WAS WORKING -- WAS TAKING ON MORE
12 RESPONSIBILITY IN TERMS OF PROCESS ENGINEERING AND PROBLEM
13 SOLVING; AND, AND THEN EVENTUALLY I GOT INTO MANAGING
14 FORMULATING GROUPS, WHICH TOOK THE RESINS OR TOOK OTHER
15 MATERIALS AND, AND FORMULATED THEM INTO COATINGS THAT
16 WOULD ACTUALLY WORK FOR OUR CUSTOMERS.

17 Q. WHEN YOU TALKED ABOUT SOME OF THE MANAGEMENT THAT
18 YOU'VE DONE, WHAT SORT OF PEOPLE AT SHERWIN-WILLIAMS DO
19 YOU MANAGE?

20 A. SO IT'S ALL TECHNICAL PEOPLE. IT GOES FROM
21 TECHNICIANS TO ENGINEERS, CHEMISTS, SCIENTISTS, PEOPLE
22 WITH DOCTORATE DEGREES, AND, AND A LOT OF THEM ARE HIGHLY
23 EXPERIENCED IN THIS FIELD.

24 Q. DO YOU HAVE ANY PATENTS?

25 A. YES, I DO.

1 Q. WHAT ARE THOSE PATENTS IN THE FIELD OF?

2 A. THERE ARE FIVE, BASICALLY FIVE PATENTS IN THE FIELD
3 OF CHEMISTRY AND POLYMER SCIENCE FOR PACKAGING COATING END
4 PIECES, SUCH AS POLYMERIZATION WITHIN AN EXTRUDER, A TWIN
5 SCREW EXTRUDER; A CHEMISTRY THAT USES ANHYDRIDE, THE
6 ANHYDRIDE CHEMISTRY FUNCTIONALITY TO CURE A COATING
7 WITHOUT THE USE OF EXTERNAL CROSS-LINKING UNITS; SOME
8 OTHER CHEMISTRY SUCH AS A PHENOLIC CHEMISTRY THAT IS VERY
9 APPROPRIATELY USED IN A WATER-BASED COATING SITUATION.

10 Q. OKAY. HOW MANY COATINGS, LET ME ASK YOU THIS, HOW
11 MANY COATING FORMULATIONS WOULD YOU SAY YOU'VE WORKED FOR
12 DURING YOUR TIME AT VALSPAR, OR WORKED ON?

13 A. AT THE BENCH AS A CHEMIST I WOULD HAVE WORKED ON
14 SCORES OF DIFFERENT FORMULATIONS FOR DIFFERENT
15 APPLICATIONS. IN MY SUBSEQUENT ROLES I WAS WORKING AT A
16 HIGHER LEVEL AND PROBABLY WORKING ON HUNDREDS OF DIFFERENT
17 FORMULATIONS.

18 Q. IS THERE ANY ASPECT OF THE CHEMISTRY OF CHEMICAL
19 COATINGS, INCLUDING THE POLYMER CHEMISTRY AND THE
20 MANUFACTURING, THAT YOU HAVEN'T WORKED ON IN YOUR OVER 30
21 YEARS AT SHERWIN-WILLIAMS?

22 A. NO.

23 Q. DO YOU KNOW THE DEFENDANT, DR. YOU?

24 A. YES.

25 Q. HOW DO YOU KNOW HER?

1 A. AROUND 2013 SHE STARTED WORKING AT COCA-COLA AS A
2 PACKAGING DEVELOPMENT ENGINEER, AND SHE WAS NOT IN THE SRA
3 GROUP, YOU KNOW, THE SCIENCE AND REGULATORY AFFAIRS GROUP,
4 AND SO HER RESPONSIBILITY WAS TO IDENTIFY PACKAGING THAT
5 WOULD WORK FOR COCA-COLA'S PRODUCTS, AND SO WE INTERACTED
6 WITH HER AND HER, HER COLLEAGUES WHEN WE WERE INTRODUCING
7 OUR NEW NON-BPA TECHNOLOGY TO COCA-COLA.

8 Q. DID THAT WORK CAUSE YOU TO MEET DR. YOU IN PERSON?

9 A. YES.

10 Q. ROUGHLY HOW MANY TIMES DID YOU MEET HER IN PERSON?

11 A. I WOULD SAY IT WAS PROBABLY TEN TIMES.

12 Q. DO YOU SEE HER HERE IN THE COURTROOM TODAY?

13 A. YES.

14 Q. WHAT'S SHE WEARING?

15 A. SHE'S WEARING, I THINK IT'S A BLACK, A BLACK JACKET
16 WITH A WHITE SHIRT.

17 MR. HUNTER: YOUR HONOR, IF WE COULD LET THE
18 RECORD REFLECT THAT THE WITNESS HAS IDENTIFIED DR. YOU.

19 THE COURT: IT MAY.

20 Q. NOW, ASIDE FROM YOUR TRAVEL AND LODGING HERE TODAY
21 HAVE YOU BEEN PAID BY THE GOVERNMENT IN ANY WAY FOR YOUR
22 TESTIMONY?

23 A. NO.

24 Q. NOTHING AT ALL?

25 A. NO.

1 Q. WHAT KIND OF COMPANY IS SHERWIN-WILLIAMS, JUST
2 GENERALLY SPEAKING?

3 A. SO SHERWIN-WILLIAMS IS A LARGE COATINGS COMPANY
4 PREDOMINANTLY IN THE PAINT ARENA. WE DO MAKE OUR OWN
5 CHEMISTRY PRODUCTS IN SOME CASES. WE ALSO PURCHASE RAW
6 MATERIALS FROM OTHER VENDORS.

7 Q. JUST GIVE US A SENSE OF THE DIFFERENT TYPES OF
8 COATINGS THAT SHERWIN-WILLIAMS MAKES.

9 A. SO CONSUMER PAINTS FOR HOUSING, WOOD FURNISHINGS,
10 AND THEN ALSO FOR OTHER TYPES OF SUBSTRATES THAT A
11 CONSUMER MIGHT WANT TO PAINT, MASONRY AND FLOORS AND OTHER
12 THINGS LIKE THAT.

13 THE INDUSTRIAL SIDE OF THE BUSINESS IS VERY
14 BROAD, SO BESIDES PACKAGING FOR METAL PACKAGING,
15 SHERWIN-WILLIAMS ALSO IS INVOLVED IN AUTOMOTIVE COATINGS,
16 SO COATINGS FOR THE, THE SURFACES ON, ON VEHICLES,
17 OFF-ROAD VEHICLES, SUCH AS CONSTRUCTION EQUIPMENT, FARM
18 EQUIPMENT; APPLIANCES, AND SO, FOR INSTANCE, WASHERS,
19 DRYERS, REFRIGERATORS.

20 Q. DO ALL OF THOSE DIFFERENT COATINGS HAVE DIFFERENT
21 REQUIREMENTS AND DIFFERENT SCIENCE THAT GOES INTO CREATING
22 THEM?

23 A. EXTREMELY DIFFERENT, YES.

24 Q. WHAT ARE SOME OF THE MOST HIGH-TECH COATINGS THAT
25 SHERWIN-WILLIAMS DEVELOPS?

1 A. WELL, OUR NON-BPA COATINGS IN PACKAGING ARE SOME OF
2 THE MOST CHALLENGED AND VALUABLE MATERIALS THAT ARE IN OUR
3 BUSINESS.

4 Q. AND YOU MENTIONED EARLIER THE DIFFERENT TYPES OF
5 PEOPLE YOU MANAGED, PH.D SCIENTISTS, BACHELOR SCIENTISTS,
6 DO YOU NEED THOSE KIND OF PEOPLE TO CREATE THOSE BPA-FREE
7 COATINGS?

8 A. YES.

9 Q. HOW MANY EMPLOYEES -- LET ME ASK YOU THIS FIRST,
10 WHERE IS SHERWIN-WILLIAMS' CORPORATE HEADQUARTERS?

11 A. CLEVELAND, OHIO.

12 Q. DO YOU HAVE ANY MANUFACTURING SITES IN TENNESSEE?

13 A. YES, I BELIEVE THERE ARE THREE PAINT SITES IN
14 TENNESSEE.

15 Q. AND ROUGHLY HOW MANY WORLDWIDE EMPLOYEES DOES
16 SHERWIN-WILLIAMS HAVE?

17 A. I THINK IT'S 61,000.

18 Q. HOW MANY OF THOSE ARE IN THE UNITED STATES?

19 A. I THINK IT'S SOMETHING LIKE 45,000.

20 Q. AND WHO ARE SHERWIN-WILLIAMS' COMPETITORS?

21 A. SO THERE ARE LARGE COMPETITORS AND SMALL COMPETI-
22 TORS. THE LARGER COMPETITORS ARE PPG AND AKZO-NOBEL. THE
23 SMALLER COMPETITORS WOULD BE METLAC AND ACTEGA.

24 Q. ARE THOSE COMPETITORS IN THE VALUE CHAIN WHEN WE
25 TALK ABOUT FORMULATORS FOR COATINGS?

1 A. PRINCIPALLY, ALTHOUGH PPG AND AKZO DO HAVE ALSO SOME
2 MANUFACTURING CAPABILITY TOO, I MEAN POLYMER MANUFACTURING
3 CAPABILITY.

4 Q. WHAT'S SHERWIN-WILLIAMS' ANNUAL REVENUE ROUGHLY?

5 A. EIGHTEEN BILLION.

6 Q. WHAT IS THE BRAND NAME OF SHERWIN-WILLIAMS' LINE OF
7 BPA-FREE PRODUCTS FOR THE INSIDE OF CANS?

8 A. IT'S CALLED VALPURE.

9 Q. HAVE THERE BEEN DIFFERENT VERSIONS OF VALPURE THAT
10 HAVE BEEN DEVELOPED BY SHERWIN-WILLIAMS?

11 A. YES, DIFFERENT FORMULATIONS.

12 Q. WHAT ARE THOSE DIFFERENT FORMULATIONS CALLED?

13 A. SO EACH APPLICATION REQUIRES ITS OWN SPECIFIC
14 FORMULATION. IF A CAN IS SPRAYED, IT WOULD BE GIVEN A
15 CERTAIN TYPE OF FORMULATION. IF A COATING HAS TO BE
16 APPLIED BY A ROLL, IT WOULD BE, AGAIN, DIFFERENT.

17 Q. LET'S JUST GO BY A NAME. ARE YOU FAMILIAR WITH A
18 COATING CALLED V30?

19 A. V30, V60, V70, YES, THOSE ARE ALL DIFFERENT VERSIONS
20 OF, OF VALPURE.

21 Q. WHAT IS V30?

22 A. SO V30 WOULD BE WHAT WE WOULD CALL A FIRST
23 GENERATION POLYESTER.

24 Q. AND WHAT IS V40?

25 A. V40 WAS A, OR IS AN ACRYLIC.

1 Q. WHAT IS V70?

2 A. V70 IS THE NON-BPA EPOXY.

3 Q. DO YOU CLASSIFY THOSE DIFFERENT COATINGS INTO
4 DIFFERENT GENERATIONS?

5 A. YES.

6 Q. HOW DO YOU DO THAT, WHICH GENERATION DO THOSE
7 DIFFERENT COATINGS, V30, V40 AND V70, FALL INTO?

8 A. SO V30 IS A FIRST GENERATION, TYPICALLY A POLYESTER,
9 OR A POLYESTER FIRST GENERATION. V40 MIGHT BE CALLED A
10 GENERATION ONE AND A HALF, DEPENDS ON WHO YOU TALK TO, AND
11 THEN V70 IS DEFINITELY RECOGNIZED AROUND THE INDUSTRY AS A
12 GENERATION TWO.

13 Q. WHAT, WHAT'S THE SIGNIFICANCE OF A GENERATION TWO
14 COATING LIKE V70, WHAT DOES THAT MEAN?

15 A. SO NOT ONLY -- AND THIS IS SORT OF DERIVED FROM
16 COCA-COLA'S NOMENCLATURE AT THE TIME, ALTHOUGH THEY'VE
17 TRIED TO DISTANCE THEMSELVES FROM THIS, I THINK. THE
18 FIRST GENERATION WERE MATERIALS THAT COULD BE USED TO
19 REPLACE BISPHENOL A EPOXIES TO COMPLY WITH CONSUMER AND
20 REGULATORY PRESSURE ON BPA, BUT THEY HAD SHORTCOMINGS.
21 THEY, THEY HAD CERTAIN PERFORMANCE ISSUES THAT WOULD
22 COMPROMISE THEIR LONG-TERM PERFORMANCE.

23 GENERATION TWO SOUGHT TO OVERCOME AND RECTIFY
24 THOSE SHORTCOMINGS SO THAT THE PERFORMANCE WAS REALLY
25 GETTING US BACK TO THE POINT WHERE WE HAD WITH BPA-BASED

1 EPOXIES.

2 Q. AND HOW LONG DID IT TAKE SHERWIN-WILLIAMS TO DEVELOP
3 THAT V70 GENERATION TWO COATING?

4 A. IT TOOK US ABOUT TEN YEARS.

5 Q. NOW, ARE YOU FAMILIAR WITH -- DID YOU PARTICIPATE IN
6 THAT INTERACTION, THAT BUSINESS BETWEEN SHERWIN-WILLIAMS
7 AND COKE?

8 A. SOME OF IT, YES.

9 Q. WHAT TIME PERIOD WERE YOU INVOLVED IN THAT
10 RELATIONSHIP?

11 A. WELL, FROM 2013 TO 2017.

12 Q. AND WHAT WAS THE PURPOSE OF SHERWIN-WILLIAMS
13 ENGAGING IN THAT WITH COKE?

14 A. SO WE NEEDED TO GIVE THEM ALL THE INFORMATION THAT
15 THEY NEEDED TO BE ABLE TO COME TO THE CONCLUSION THAT THIS
16 MATERIAL WAS SOMETHING THAT COULD BE OF GREAT BENEFIT TO
17 COCA-COLA AND THAT THEY SHOULD WORK TOWARDS QUALIFYING IT
18 FOR THEIR PRODUCTS.

19 Q. WAS THAT IMPORTANT FOR SHERWIN-WILLIAMS' BUSINESS?

20 A. EXTREMELY IMPORTANT.

21 Q. WHY, WHY WAS IT SO IMPORTANT?

22 A. WELL, NOT ONLY IS COCA-COLA ONE OF THE LARGEST USERS
23 OF COATED CANS FOR THEIR PRODUCT, THEY'RE SO BIG THAT THE
24 IMPACT ON THE REST OF THE SUPPLY CHAIN, THE CAN MANUFAC-
25 TURING SUPPLY CHAIN, WAS, YOU KNOW, VERY STRONG, AND IT

1 JUST TRENDED TO GO THE WAY THAT COCA-COLA WANTED IT TO GO.

2 Q. AND WHAT WERE THE NATURE OF THE DISCLOSURES -- WERE
3 YOU MAKING THOSE DISCLOSURES BEFORE THE DEFENDANT WAS
4 INVOLVED WITH THOSE PRODUCTS, WITH THE PROJECT?

5 A. ONLY TO THE SRA GROUP.

6 Q. AND WHAT WERE THE NATURE OF THE DISCLOSURES THAT
7 SHERWIN-WILLIAMS WOULD MAKE TO THE SRA GROUP AT COKE?

8 A. SO THE SRA GROUP REQUIRED AN MCARF, MATERIAL
9 COMPOSITION -- MCARF, I FORGET WHAT THE REST OF THE
10 ACRONYM STANDS FOR. BASICALLY IT'S A DISCLOSURE OF THE
11 INDIVIDUAL COMPONENTS OF A COATING, AND IT WOULD NOT
12 CONTAIN PERCENTAGES, IT WOULD ONLY CONTAIN THE NAMES OF
13 THOSE CHEMICALS AND THEIR CAS NUMBER, THE C-A-S NUMBER.

14 Q. ARE THOSE MCARF DISCLOSURES, THOSE LIST OF
15 MATERIALS, ARE THOSE VALUABLE, IS THAT VALUABLE
16 INFORMATION TO SHERWIN-WILLIAMS?

17 A. EXTREMELY VALUABLE BECAUSE IT DISCLOSES TRADE
18 SECRETS, NOT JUST THAT WE ARE USING THESE CERTAIN
19 MATERIALS, BUT IT ALSO SAYS WE ARE NOT USING A WHOLE HOST
20 OF OTHER MATERIALS.

21 Q. AND WERE THOSE DISCLOSURES TO THE SRA GROUP MADE
22 PURSUANT TO A NON-DISCLOSURE AGREEMENT?

23 A. YES.

24 Q. WHAT DID THAT NON-DISCLOSURE AGREEMENT REQUIRE COKE
25 TO DO?

1 A. THE NON-DISCLOSURE AGREEMENT WITH THE SRA GROUP
2 PROHIBITED THEM FROM SHARING THAT INFORMATION WITH ANYBODY
3 ELSE WITHIN COCA-COLA, AND SO IT CREATED A FIREWALL, AND
4 SO THEY, THEY WERE PROHIBITED FROM, FROM REVEALING OR
5 DISCLOSING ANY OF THIS INFORMATION TO ANYBODY ELSE WITHIN
6 COCA-COLA.

7 Q. NOW, WHEN THE DEFENDANT CAME AND STARTED WORKING ON
8 THIS PROJECT, WHAT CHANGED?

9 A. SO SHE WAS OBVIOUSLY VERY, VERY INTERESTED IN THE
10 CHEMISTRY TO THE EXCLUSION OF THE PERFORMANCE OF THE
11 COATING, WHICH WAS A STEP CHANGE, A MAJOR STEP CHANGE
12 FROM, FROM PEOPLE THAT HELD THAT POSITION BEFOREHAND.

13 Q. AND WHAT WAS THAT ADDITIONAL INFORMATION THAT YOU'RE
14 SUGGESTING SHE WANTED?

15 A. WELL, SHE OFTEN MADE CLAIMS THAT SHE WAS A POLYMER
16 CHEMIST AND THAT SHE KNEW MORE ABOUT POLYMER CHEMISTRY
17 THAN WE DID AND THAT WE NEEDED TO REVEAL OUR CHEMISTRY TO
18 HER SO THAT SHE COULD KNOW WHETHER THE MATERIAL WAS GOING
19 TO BE WORTH LOOKING AT OR NOT.

20 Q. DID THE DEFENDANT EVER MAKE ANY CLAIMS ABOUT WHERE
21 YOU WERE WITH RESPECT TO YOUR COMPETITORS?

22 A. SHE WOULD SAY, YOU KNOW, ALMOST VERY FREQUENTLY THAT
23 WE WERE BEHIND OUR COMPETITORS AND WE WERE -- THE REASON
24 FOR THAT WAS THAT WE WERE NOT REVEALING THIS INFORMATION.

25 Q. DID YOU KNOW WHETHER THAT WAS TRUE AS A MATTER OF

1 FACT?

2 A. THE MARKET, THE ACTIVITY IN THE MARKET CONTRADICTED
3 THAT, AND SO WE -- I FELT THAT IT WAS A WAY TO TRY TO
4 LEVERAGE US AND TO EXTRACT THAT INFORMATION THAT AT THAT
5 POINT AT LEAST SHE WAS NOT ABLE TO GET OUT OF THE SRA
6 GROUP.

7 Q. WHAT DO YOU MEAN BY THE WORD "LEVERAGE" YOU?

8 A. THREATEN US.

9 Q. AND THREATEN YOU IN WHAT WAY, WHAT WOULD HAVE
10 HAPPENED IF YOU DIDN'T PROVIDE THE INFORMATION THE
11 DEFENDANT WANTED?

12 A. THEN SHE WAS GOING TO STOP ANY QUALIFICATIONS OF OUR
13 MATERIAL OR PROHIBIT THEM FROM EVER OCCURRING.

14 Q. AND WHAT WOULD HAVE BEEN THE RESULT OF THAT FOR
15 SHERWIN-WILLIAMS?

16 A. WELL, IT WOULD HAVE BEEN DEVASTATING BECAUSE THIS
17 TECHNOLOGY, THE VALPURE TECHNOLOGY, WOULD NOT HAVE BEEN
18 ADOPTED THE WAY IT, IT TURNS OUT IT HAS BEEN.

19 Q. SO WHEN THE DEFENDANT STARTED MAKING THESE THREATS,
20 WHAT DID YOU DO?

21 A. SO I TALKED TO MY MANAGEMENT, AND I SAID, THERE'S,
22 THERE'S SOME KIND OF AN ANOMALY GOING ON HERE THAT THERE'S
23 BEEN A SEA CHANGE IN THE BEHAVIOR OF THE GROUP THAT'S
24 RESPONSIBLE FOR QUALIFYING THIS PACKAGING, AND --

25 Q. LET ME ASK YOU BEFORE YOU CONTINUE, DID YOU

1 INITIALLY REFUSE TO PROVIDE?

2 A. ABSOLUTELY.

3 Q. AND THIS IS -- WHAT WERE YOU REFUSING TO PROVIDE AT
4 THAT POINT?

5 A. THE, ANY KIND OF A LIST OF THE CHEMICALS OR A MORE
6 IN-DEPTH DESCRIPTION OF THE CHEMISTRY THAT'S USED IN THESE
7 COATINGS.

8 Q. WHEN YOU SAY "MORE IN-DEPTH CHEMISTRY", DID THAT
9 INCLUDE INFORMATION WITH INGREDIENTS AND AMOUNTS OF
10 INGREDIENTS?

11 A. YES.

12 Q. OKAY. CONTINUE, YOU WERE DESCRIBING WHAT YOU DID
13 AFTER YOU REFUSED INITIALLY.

14 A. SO WE -- I REFUSED, AND I, I LET MY MANAGEMENT KNOW
15 WHAT THE SITUATION WAS, AND WE STARTED TO TRY TO FIGURE
16 OUT IF THERE WAS A WAY TO GET SHANNON YOU SOME INFORMATION
17 THAT MIGHT, YOU KNOW, HELP HER COME TO A POSITIVE
18 CONCLUSION, AND IT JUST DIDN'T APPEAR TO US THAT WE WERE
19 EVER GOING TO BE ABLE TO SATISFY HER WITHOUT A FULL
20 DISCLOSURE OF THE INFORMATION, WHICH WE COULDN'T DO.

21 Q. DO YOU REMEMBER ANY SPECIFIC THREATS THAT THE
22 DEFENDANT MADE OR ANY SPECIFIC DISCUSSIONS ABOUT PROVIDING
23 THIS INFORMATION THAT YOU INITIALLY DIDN'T, DID NOT WANT
24 TO PROVIDE?

25 A. YES. I MEAN, AT, AT ONE MEETING AND -- IN ATLANTA,

1 AT ANOTHER MEETING IN PITTSBURGH, AND A DINNER IN ATLANTA
2 ONE TIME, SHE BASICALLY SAID THAT WE, WE WERE BEHIND OUR
3 COMPETITION AND WE WERE NOT GOING TO BE APPROVED IF WE
4 DIDN'T GIVE UP THIS INFORMATION.

5 Q. WHAT WERE THE NATURE OF THOSE DISCUSSIONS, WERE THEY
6 PLEASANT DISCUSSIONS WITH THE DEFENDANT?

7 A. NO, THEY WERE TENSE.

8 Q. TENSE IN WHAT WAY?

9 A. WE STARTED TRYING TO PROBE, OBVIOUSLY, WE WEREN'T
10 GOING TO GIVE HER THE INFORMATION, WE STARTED TO PROBE AS
11 TO WHY SHE NEEDED THAT INFORMATION, AND WHAT SHE SAID WAS
12 THAT, AGAIN, YOU KNOW, SHE WAS A POLYMER CHEMIST WHO KNEW
13 MORE ABOUT COATINGS THAN WE DID AND THAT SHE WAS HELPING
14 OUR COMPETITION, BY HER ADVICE SHE WAS HELPING OUR
15 COMPETITION ACHIEVE BETTER PERFORMANCE, AND THAT SHE
16 WANTED TO DO THE SAME THING FOR US, BUT SHE COULDN'T DO
17 THAT UNLESS WE WERE MORE OPEN.

18 Q. SO SHE JUST WANTED TO HELP SHERWIN-WILLIAMS?

19 A. THAT'S -- THAT WAS HER STORY, YES.

20 Q. DID YOU HAVE ANY REASON TO BELIEVE THAT THE
21 DEFENDANT WAS ACTING AT THE REQUEST OF HER SUPERVISORS AT
22 COKE OR ANYONE ELSE AT COKE IN MAKING THESE REQUESTS FOR
23 THE RECIPE INFORMATION, THE MORE DETAILED INFORMATION AT
24 SHERWIN-WILLIAMS?

25 A. WE KNOW THAT HER SUPERVISOR YU SHI WAS INVOLVED AND

1 THAT SHE HAD VISITED OUR TECHNICAL CENTER IN PITTSBURGH
2 TOGETHER WITH SHANNON YU, AND THEY WERE BOTH PUTTING
3 PRESSURE ON US TO REVEAL THE TECHNOLOGY, THE CHEMISTRY OF
4 THE TECHNOLOGY.

5 Q. AND WHAT HAPPENED THEN, HOW DID VALSPAR/
6 SHERWIN-WILLIAMS DETERMINE WHETHER TO PROVIDE THIS
7 INFORMATION TO COKE AND THE DEFENDANT?

8 A. SO WE HAD CONVERSATIONS WITH OUR CHIEF TECHNICAL
9 OFFICER, CYNTHIA ARNOLD.

10 Q. WHEN YOU SAY "CHIEF TECHNICAL OFFICER", JUST HOW
11 HIGH UP OF A PERSON IS THAT AT SHERWIN-WILLIAMS?

12 A. SHE REPORTS TO THE CEO.

13 Q. GO AHEAD.

14 A. AND SHE JUST MADE THE DECISION TO HAVE ANOTHER
15 CONFIDENTIAL, CONFIDENTIAL DISCLOSURE AGREEMENT SET UP
16 WHERE NAMED INDIVIDUALS, LIKE SHANNON YU AND YU SHI,
17 WOULD HAVE ACCESS TO THIS INFORMATION THAT WE WOULD, WE
18 WOULD GIVE THEM WHERE IT WAS OBVIOUSLY EVERY, YOU KNOW,
19 EVERYTHING WAS UNDER THE DISCLOSURE AND WAS ONLY TO BE
20 USED FOR PURPOSES OF QUALIFYING THESE COATINGS, NO OTHER
21 USE WAS ALLOWED.

22 Q. SO DO I UNDERSTAND YOU RIGHT, YOU HAD A NON-
23 DISCLOSURE IN PLACE ALREADY WITH COKE FOR THE SRA
24 PURPOSES; IS THAT RIGHT?

25 A. YES.

1 Q. SO BECAUSE OF THESE NEW REQUESTS FROM THE DEFENDANT
2 YOU AMENDED THAT DISCLOSURE AGREEMENT TO BE MORE
3 PROTECTIVE, IS THAT FAIR?

4 A. TO, AND TO INCLUDE THE TWO PEOPLE I MENTIONED, YES.

5 Q. YOU SPECIFICALLY NAMED THOSE TWO PEOPLE?

6 A. YES.

7 Q. IS IT UNUSUAL TO TAKE THIS SORT OF BUSINESS DECISION
8 UP TO THE CHIEF TECHNOLOGY OFFICER OF SHERWIN-WILLIAMS?

9 A. IT'S HIGHLY UNUSUAL.

10 Q. HAVE YOU EVER DONE IT BEFORE TO GET A, REQUESTED TO
11 SHARE INFORMATION?

12 A. NO.

13 MR. HUNTER: YOUR HONOR, I SEE IT'S PAST 10:30,
14 THIS MIGHT BE A GOOD TIME.

15 THE COURT: IF THIS IS A GOOD POINT, WE'LL TAKE
16 A MORNING BREAK.

17 LADIES AND GENTLEMEN, LET'S TAKE OUR BREAK, AND
18 WE'LL RESUME AS SOON AS YOU CAN BE BROUGHT BACK UP TO THE
19 COURTROOM.

20 (RECESS AT 10:35 A.M., UNTIL 10:57 A.M.)

21 (JURY PRESENT)

22 THE COURT: ALL RIGHT. MR. HUNTER, YOU MAY
23 PROCEED.

24 BY MR. HUNTER:

25 Q. MR. MALLEN, YOU'RE STILL UNDER OATH.

1 COULD WE PULL UP EXHIBIT 5F FOR THE WITNESS
2 ONLY, PLEASE.

3 MR. MALLEN, DO YOU RECOGNIZE THIS DOCUMENT?
4 YOU ALSO HAVE HARD COPIES OF THESE EXHIBITS AVAILABLE TO
5 YOU IF YOU'D RATHER LOOK AT THEM.

6 A. OKAY. THANK YOU.

7 Q. CAN YOU READ THAT OKAY?

8 A. THAT'S BETTER. YES.

9 MR. HUNTER: AND JUST SCROLL DOWN A LITTLE BIT,
10 COUPLE OF PAGES HERE.

11 Q. WE JUST SCROLLED THROUGH THAT DOCUMENT. IT APPEARS
12 TO CONTAIN MULTIPLE DOCUMENTS TOGETHER. DO YOU RECOGNIZE
13 THOSE DOCUMENTS?

14 A. YES.

15 Q. WHAT ARE THEY?

16 A. SO I BELIEVE THIS IS THE AMENDMENT TO --

17 Q. WHAT IS THE TOTALITY OF ALL THE DOCUMENTS?

18 A. THEY'RE CONFIDENTIALITY DISCLOSURE AGREEMENTS WITH
19 COCA-COLA.

20 MR. HUNTER: YOUR HONOR, AT THIS TIME THE
21 GOVERNMENT MOVES TO PUBLISH AND ADMIT EXHIBIT 5F.

22 THE COURT: 5F IS ADMITTED AND MAY BE
23 PUBLISHED.

24 Q. NOW, WHAT IS THE PURPOSE OF THESE DOCUMENTS, THESE
25 NON-DISCLOSURE AGREEMENTS BETWEEN COKE AND

1 SHERWIN-WILLIAMS?

2 A. SO IT DECLARES THAT CONFIDENTIAL INFORMATION IS --
3 WE'RE PLANNING TO, AT THIS TIME IT WAS TVC, THE VALSPAR
4 CORPORATION, WAS GOING TO DISCLOSE TO COCA-COLA SENSITIVE
5 AND CONFIDENTIAL INFORMATION AND THEIR OBLIGATIONS
6 THEREUNDER.

7 Q. WHAT KIND OF OBLIGATIONS DID COKE HAVE UNDER THIS
8 AGREEMENT, THESE AGREEMENTS?

9 A. SO THEY WERE PROHIBITED FROM DISCLOSING TO A THIRD
10 PARTY EXCEPT UNDER CERTAIN CONDITIONS. THEY WERE TO USE
11 IT ONLY FOR THE PURPOSES OF WHATEVER THEIR FUNCTION WAS.

12 Q. AND UNDER THESE AGREEMENTS WAS THERE ANY LEGITIMATE
13 REASON WHATSOEVER FOR ANY COKE EMPLOYEE TO HAVE
14 SHERWIN-WILLIAMS' INFORMATION AFTER LEAVING COKE?

15 A. NO.

16 Q. IF YOU'LL LOOK AT PAGE 5 OF THIS AGREEMENT.
17 CAN YOU ZOOM IN THE TOP.

18 DO YOU SEE THAT?

19 A. YES.

20 Q. WHAT IS THIS, WHAT IS THIS PAGE?

21 A. SO IT'S AN AMENDMENT TO THE NON-DISCLOSURE
22 AGREEMENT, AND IT'S DATED JUNE 27, 2013.

23 MR. HUNTER: CAN YOU ZOOM IN ON PARAGRAPH A.

24 Q. WHAT IS THE PURPOSE OF PARAGRAPH A?

25 A. SO THIS PARAGRAPH DESCRIBES THE INFORMATION THAT

1 WOULD BE AVAILABLE AND SUBMITTED TO PEOPLE WITHIN THE
2 SCIENTIFIC AND REGULATORY AFFAIRS GROUP, THE SRA GROUP.

3 Q. AND CAN YOU READ THIS PART STARTING, WHO SHALL USE.

4 A. SO IT SAYS -- IT LOOKS LIKE IT'S CROSSED OUT NOW, I
5 CAN'T READ THROUGH THE RED.

6 YEAH.

7 Q. WHO SHALL USE, AND JUST READ THE REST OF THAT
8 SENTENCE.

9 A. SO THEY DO HAVE THE RIGHT TO DISCLOSE THE
10 FORMULATION INFORMATION TO A REGULATORY, A GOVERNMENT
11 REGULATORY BODY STRICTLY FOR PURPOSES OF --

12 Q. I'M JUST SAYING CAN YOU READ, WHO SHALL USE THE
13 FORMULATION INFORMATION, DO YOU SEE THAT?

14 A. THE COCA-COLA COMPANY.

15 Q. WELL, CAN YOU READ THAT, THAT PHRASE RIGHT THERE,
16 YOU SEE WHERE IT SAYS, WHO SHALL USE THE FORMULATION
17 INFORMATION ONLY FOR REGULATORY PURPOSES?

18 A. YES.

19 Q. WHAT'S THE MEANING OF THAT, OF THAT PHRASE?

20 A. SO THIS, THIS INFORMATION IS USED BY COCA-COLA TO
21 ASSESS THE REGULATORY STATUS AROUND THE WORLD OF A COATING
22 THAT IS COMPOSED OF CERTAIN SUBSTANCES.

23 MR. HUNTER: COULD YOU ZOOM IN ON PARAGRAPH B.

24 Q. CAN YOU JUST READ THE FIRST SENTENCE OF PARAGRAPH B.

25 A. TO ALLOW THE COCA-COLA COMPANY TO VALIDATE THE FILM

1 PERFORMANCE PROPERTIES OF CERTAIN VALSPAR CORPORATION BPA
2 NON-INTENT COATING COMPOSITIONS. IT IS ALSO ANTICIPATED
3 THAT THE VALSPAR CORPORATION WILL DISCLOSE FORMULATION
4 INFORMATION, INCLUDING CURED FILM SAMPLES, TO THE
5 COCA-COLA COMPANY PERSONNEL YU SHI AND SHANNON YOU.

6 Q. OKAY. IF YOU'LL STOP RIGHT THERE. WHY IS THAT
7 PARAGRAPH SEPARATE FROM THE PREVIOUS, PREVIOUS PARAGRAPH?

8 A. I'M PRESUMING BECAUSE THEY WERE NOT INCLUDED IN THE
9 LISTING OF THE SRA PEOPLE SINCE THEY DON'T WORK, OR DID
10 NOT WORK IN THAT FUNCTION, AND IT, IT SPECIFICALLY STATES
11 WHAT KIND OF INFORMATION WOULD BE DISCLOSED TO THEM.

12 Q. DID YOU TRUST THAT THIS NDA WOULD ENSURE THAT
13 SHERWIN-WILLIAMS' CONFIDENTIAL INFORMATION WOULD STAY AT
14 COKE?

15 A. I DID, YES.

16 Q. NOW, WHEN YOU WOULD SEND INFORMATION TO COKE OR TO
17 THE DEFENDANT, WOULD YOU REMIND THEM OF OBLIGATIONS UNDER
18 THESE NON-DISCLOSURE AGREEMENTS?

19 A. YES. WE WOULD MARK THE INFORMATION AS CONFIDENTIAL
20 PER THIS AGREEMENT.

21 Q. DO YOU REMEMBER THE DEFENDANT EVER CONTESTING ANY OF
22 THOSE MARKINGS AND, NO, THIS ISN'T CONFIDENTIAL, WHY ARE
23 YOU MARKING IT THAT WAY?

24 A. NO.

25 Q. DID YOU EVER HAVE A DISPUTE ABOUT THAT, WHETHER YOU

1 WERE IMPROPERLY USING CONFIDENTIALITY DESIGNATIONS WITH
2 THE DEFENDANT?

3 A. NO.

4 Q. DID YOU EVER RECLASSIFY A CONFIDENTIAL DOCUMENT
5 BASED ON AN INTERACTION WITH THE DEFENDANT SAYING IT
6 WASN'T ACTUALLY CONFIDENTIAL?

7 A. NO.

8 Q. NOW, DESCRIBE HOW THIS -- SO THIS -- IS THIS THE
9 NDA, THE ONE WE JUST LOOKED AT, THE AMENDMENT YOU REFERRED
10 TO EARLIER WHEN THE DEFENDANT WAS ASKING FOR MORE
11 INFORMATION THAT YOU TALKED WITH THE CTO ABOUT SIGNING?

12 A. YES.

13 Q. SO THIS GETS SIGNED, WHAT HAPPENS THEN?

14 A. SO THEN WE -- WHENEVER WE WERE HAVING MEETINGS WITH
15 THE DEFENDANT OR CONVERSATIONS OVER E-MAIL, WHENEVER THE,
16 THE REQUEST CAME IN, WE WOULD EVALUATE IT AS TO WHETHER IT
17 WAS IN COMPLIANCE WITH THIS AGREEMENT, AND WE WOULD MARK
18 IT UP AND SEND IT TO HER, PRESENT IT TO HER.

19 Q. WERE YOUR INTERACTIONS AFTER THIS AGREEMENT WERE
20 SIGNED, DID YOUR OTHERWISE CONTENTIOUS INTERACTIONS BECOME
21 FRIENDLY AT THAT POINT?

22 A. I WOULD SAY NOT. SHE CONTINUED TO ASK FOR EVEN MORE
23 INFORMATION THAN WE FELT WAS COVERED BY THIS AGREEMENT,
24 AND SO WE DECLINED TO PROVIDE THAT INFORMATION TO OUR
25 SALES OR MARKETING PEOPLE, WHICH THEN WOULD ESCALATE THE

1 CONVERSATION.

2 Q. DID YOU COME TO LEARN THAT THE DEFENDANT HAD LEFT
3 COKE?

4 A. YES.

5 Q. WHERE DID YOU COME TO LEARN THAT SHE WENT AFTER
6 LEAVING COKE?

7 A. I THINK SHE CONTACTED OUR RESEARCH, OUR VP OF
8 RESEARCH FOR PACKAGING, ALEX KRUGLOV, WHEN WE WERE SITTING
9 IN A MEETING TOGETHER, AND HE HAD RECEIVED EITHER AN
10 E-MAIL OR A TEXT MESSAGE STATING THAT SHE WAS LEAVING COKE
11 AND WOULD BE INTERESTED IN PURSUING A JOB AT, AT SHERWIN
12 AT THAT TIME.

13 Q. AND DID SHE END UP GETTING A JOB AT
14 SHERWIN-WILLIAMS?

15 A. NO.

16 Q. WHERE DID SHE GO?

17 A. SHE WENT TO EASTMAN CHEMICAL.

18 Q. WHEN YOU CAME TO LEARN SHE WENT TO EASTMAN CHEMICAL,
19 WHAT DID YOU DO?

20 A. WELL, WE HAD A CONVERSATION INTERNALLY, AND WE
21 DECIDED THAT WE SHOULD SEND A LETTER TO EASTMAN REMINDING
22 THEM OF HER OBLIGATION ACCORDING TO THIS AMENDED
23 DECLARATION.

24 Q. IS THAT COMMON TO SEND A LETTER TO AN EMPLOYER OF
25 SOMEONE WHO WAS NEVER ACTUALLY AN EMPLOYEE OF

1 SHERWIN-WILLIAMS REMINDING THEM OF CONFIDENTIALITY
2 APPLICATIONS?

3 A. I'VE NEVER KNOWN IT TO HAPPEN.

4 Q. DID YOU RECEIVE FILES FROM THE FBI AT SOME POINT IN
5 2018?

6 A. YES.

7 Q. WHAT DID THE FBI TELL YOU ABOUT THOSE FILES?

8 A. THAT THEY WERE VALSPAR/SHERWIN-WILLIAMS RELATED
9 DOCUMENTS THAT WERE FOUND IN THE POSSESSION OF SHANNON
10 YOU.

11 Q. AND IN FRONT OF YOU YOU SHOULD HAVE EXHIBITS MARKED
12 28A THROUGH 28N.

13 A. YES, SIR.

14 Q. CAN YOU HOLD THOSE UP SO THE JURY CAN GET A CHANCE
15 TO LOOK AT THEM REAL QUICK.

16 A. (WITNESS COMPLIES).

17 Q. AND ARE THOSE THE DOCUMENTS THAT YOU REVIEWED THAT
18 WERE PROVIDED BY THE FBI?

19 A. YES.

20 Q. WHAT -- WHEN YOU TOOK A LOOK, WHEN THE FBI PROVIDED
21 THOSE DOCUMENTS TO YOU, WHAT, WHAT WERE YOU DOING, WHAT
22 WAS YOUR INTENT IN LOOKING AT THOSE DOCUMENTS?

23 A. TRYING TO ASCERTAIN HOW MUCH OF THIS INFORMATION
24 WAS, YOU KNOW, TRADE SECRET INFORMATION VERSUS OTHERWISE
25 DISCLOSED INFORMATION TO MAKE SURE THAT EVERYTHING HAD A,

1 A STAMP ON IT THAT CLAIMED THAT IT WAS CONFIDENTIAL AND
2 TRY TO UNDERSTAND AT WHAT POINT WOULD SHE HAVE BEEN, WOULD
3 SHE HAVE ACCESSED THIS INFORMATION.

4 Q. CAN YOU JUST SUMMARIZE IN A COUPLE OF FEW SENTENCES
5 WHAT INFORMATION IS CONTAINED IN THOSE DOCUMENTS MARKED
6 23A THROUGH N.

7 A. SO IN SOME CASES THE INFORMATION IS A REVIEW OF
8 INFORMATION THAT'S ALREADY IN THE PUBLIC DOMAIN, SUCH AS
9 THE, THE MONOMER FOR MAKING A NON-BPA EPOXY, WHICH WE
10 FREELY DISCLOSED, AND THE POLYMER THAT WOULD BE MADE FROM
11 THAT. IN OTHER CASES IT'S INFORMATION THAT IS KEPT AS A
12 TRADE SECRET AND NOT DISCLOSED TO EVEN PEOPLE
13 INTERNALLY.

14 Q. I MISSPOKE EARLIER. I SAID EXHIBIT 23A, IT'S
15 ACTUALLY 28A THROUGH N; CORRECT?

16 A. 28A THROUGH N.

17 Q. WHAT BRAND OF COATING DID THIS INFORMATION RELATE
18 TO?

19 A. SO VALPURE MATERIALS WHICH WOULD INCLUDE BEVERAGE
20 COATINGS FOR BEVERAGE CANS.

21 Q. AND WHEN SHERWIN-WILLIAMS MANUFACTURES AND WHEN IT
22 DEVELOPED THE VALPURE LINE OF COATINGS, WHERE DID IT
23 INTEND TO DISTRIBUTE THAT PRODUCT?

24 A. GLOBALLY.

25 Q. DOES THAT INCLUDE THROUGHOUT THE UNITED STATES?

1 A. YES.

2 Q. NOW, AS THE GLOBAL DIRECTOR OF PACKAGING AND
3 REGULATORY AFFAIRS AT SHERWIN-WILLIAMS, ARE YOU GENERALLY
4 FAMILIAR WITH WHAT'S IN THE PUBLIC DOMAIN REGARDING THE
5 VALPURE LINE OF COATINGS?

6 A. YES.

7 Q. DOES THAT INCLUDE WHAT'S IN PUBLISHED PATENTS
8 REGARDING THOSE COATINGS?

9 A. YES.

10 Q. WHY IS THAT AN IMPORTANT PART OF YOUR JOB TO BE
11 FAMILIAR WITH WHAT'S IN THE PUBLIC DOMAIN ABOUT THESE
12 COATINGS?

13 A. WE HAVE TO HAVE AN OPEN DIALOGUE WITH STAKEHOLDERS
14 IN SOCIETY IN ORDER TO BE ABLE TO ASSURE THEM AND THE
15 AGENCIES THAT SPEAK FOR THEM THAT THESE MATERIALS ARE SAFE
16 AND EFFECTIVE AND POSE NO CONCERN, NO HEALTH CONCERN TO,
17 TO THEM OR TO THEIR FAMILY.

18 MR. HUNTER: AND CAN WE PULL UP WHAT'S BEEN
19 ALREADY ADMITTED AS EXHIBIT 28A.

20 Q. DO YOU RECOGNIZE THIS DOCUMENT?

21 A. YES.

22 Q. WHAT IS IT?

23 A. SO IT'S A DOCUMENT THAT'S MARKED CONFIDENTIAL FROM
24 FEBRUARY 8, 2016.

25 Q. LET'S JUST STOP RIGHT THERE. HOW MANY DIFFERENT

1 WAYS IS THIS DOCUMENT MARKED CONFIDENTIAL?

2 A. TWO.

3 Q. AND LET'S -- CAN YOU POINT THOSE OUT. IS THERE ONE?

4 A. SO IN BOLD UNDER THE DATE IT SAYS, "CONFIDENTIAL
5 PURSUANT TO NON-DISCLOSURE AGREEMENT DATED AUGUST 1,
6 2012".

7 Q. AND WHAT DOES THIS SAY RIGHT HERE?

8 A. IT SAYS, "DO NOT COPY".

9 Q. WHAT DOES IT SAY IN THE WATERMARK?

10 A. SO THE DIAGONAL WATERMARK ACROSS THE PAGE SAYS,
11 "CONFIDENTIAL, DO NOT COPY, NDA AUGUST 1, 2012".

12 Q. NDA REFERS TO A NON-DISCLOSURE AGREEMENT?

13 A. CORRECT.

14 Q. WHAT IS THE INFORMATION DEPICTED HERE WHERE IT SAYS,
15 "COMPOSITION"?

16 A. SO THIS IS THE COMPOSITION OF XXXXXX WHICH IS A
17 BEVERAGE END COATING, AND IT'S --

18 Q. YOU JUST MENTIONED A BEVERAGE END COATING, WHAT'S
19 THE SIGNIFICANCE OF A BEVERAGE END COATING?

20 A. SO IF YOU LOOK AT A TYPICAL BEVERAGE CAN, THERE'S
21 BASICALLY TWO PARTS TO IT. THE LARGER PART IS THE
22 CYLINDER WITH THE BOTTOM OF IT ALREADY INTEGRAL TO THAT
23 CYLINDER, AND THE SECOND PART OF IT IS THE CLOSURE OR THE
24 END THAT SEALS THE PRODUCT INTO THAT CAN.

25 Q. IS THAT BEVERAGE END COATING DIFFERENT THAN THE

1 INTERNAL?

2 A. VERY DIFFERENT.

3 Q. IS IT MORE CHALLENGING TO CREATE THAT BEVERAGE END
4 COATING OR LESS CHALLENGING?

5 A. I WOULD SAY IT'S MORE CHALLENGING BECAUSE THE METAL
6 IS MUCH MORE HIGHLY FABRICATED, MEANING IT'S ESSENTIALLY
7 TORTURED INTO SHAPE.

8 Q. AND GO AHEAD AND DESCRIBE WHAT THE INFORMATION IS
9 DOWN THE LEFT-HAND SIDE OF THIS DOCUMENT.

10 A. SO ON THE LEFT-HAND SIDE IT INDICATES THE SPECIFIC
11 CHEMICAL COMPONENTS THAT ARE USED TO MAKE THIS COATING.

12 Q. AND GO AHEAD AND --

13 A. AND THE COLUMN NEXT TO IT ON THE RIGHT LISTS HOW
14 MUCH OF EACH OF THOSE INDIVIDUAL COMPONENTS ARE USED IN
15 THE COATINGS.

16 Q. AND SHOULD THESE ADD UP TO 100 PERCENT?

17 A. YES.

18 Q. AND IF I WERE TO REMOVE WATER FROM THE COATING, DOES
19 IT ADD UP TO 100 PERCENT ANYMORE?

20 A. NO.

21 Q. WOULD YOU BE ABLE TO FIGURE OUT THOUGH JUST BY DOING
22 SOME SIMPLE SUBTRACTION WHAT THAT NUMBER WAS THAT I JUST
23 DELETED?

24 A. YES.

25 Q. DO YOU HAVE TO BE A PH.D. OR POLYMER SCIENTIST TO

1 FIGURE THAT OUT?

2 A. NO.

3 Q. DID THE DEFENDANT EVER, DID THE DEFENDANT EVER TELL
4 YOU THAT THIS INFORMATION WAS NOT, DESPITE ALL THE
5 MARKINGS, THAT ANY OF THAT, THOSE MARKINGS WERE INCORRECT,
6 THAT THIS ACTUALLY WAS NOW IN THE PUBLIC DOMAIN?

7 A. NO.

8 Q. DID SHE -- DID ANYONE AT COKE EVER TELL YOU THAT
9 THIS INFORMATION WAS NOW IN THE PUBLIC DOMAIN?

10 A. NO.

11 Q. YOU MENTIONED BEFORE SHE THREATENED SHERWIN-WILLIAMS
12 TO GET THIS INFORMATION?

13 A. YES.

14 Q. DO YOU NOTICE ANYTHING ABOUT HOW THIS DOCUMENT
15 APPEARS?

16 A. SO IT'S NOT SQUARE TO THE PAGE, IT'S GOT SHADING,
17 WHICH INDICATES A SHADOW SOMEHOW HAS BEEN SHOWN OVER ONE
18 CORNER, AND TO ME IT LOOKS LIKE EITHER A PHOTOGRAPH, A
19 SCAN OR SOME KIND OF A FACSIMILE OF A DOCUMENT.

20 Q. IS A PHOTO OR A SCAN OR A FACSIMILE HOW
21 SHERWIN-WILLIAMS PROVIDED THIS INFORMATION TO THE
22 DEFENDANT?

23 A. NO.

24 Q. WAS A PHOTO, A SCAN OR A FACSIMILE A WAY THAT
25 SHERWIN-WILLIAMS STORES THIS DOCUMENT IN ITS OWN

1 SYSTEMS?

2 A. NO.

3 Q. WOULD SHERWIN-WILLIAMS HAVE PROVIDED THIS DOCUMENT
4 AS A PHOTO, SCAN OR FACSIMILE TO ANYBODY?

5 A. NO.

6 Q. IS THIS RECIPE -- IS IT FAIR TO CALL THIS, THIS LIST
7 OF INGREDIENTS AND THE AMOUNTS OF THOSE INGREDIENTS A
8 RECIPE?

9 A. YES.

10 Q. AND TO WHAT PRECISION IS THE AMOUNTS OF THE
11 INGREDIENTS SPECIFIED IN THAT RECIPE?

12 A. A TENTH OF A PERCENT.

13 Q. A TENTH OF A PERCENT?

14 A. YES.

15 Q. IS IT FAIR TO CALL THIS RECIPE WITH THIS COMBINATION
16 OF -- WELL, STRIKE THAT. IS THIS RECIPE WITH THIS
17 COMBINATION OF INGREDIENTS AND THIS AMOUNT OF INGREDIENTS
18 DOWN TO A TENTH OF A PERCENT AVAILABLE IN A PUBLIC DOMAIN
19 IN ANY FORM WHATSOEVER TO THE BEST OF YOUR KNOWLEDGE?

20 A. NO.

21 Q. WHAT, JUST GENERALLY SPEAKING, WHAT LEVEL OF
22 SECURITY DOES SHERWIN-WILLIAMS AFFORD THIS TYPE OF
23 RECIPE?

24 A. WE TAKE GREAT PAINS TO PROTECT THIS KIND OF
25 INFORMATION THROUGH ELECTRONIC MEANS, YOU KNOW, SILOING

1 FUNCTIONS --

2 Q. AND WE'LL GET INTO THOSE MEASURES LATER, JUST GIVE
3 US A SENSE, IS THIS KIND OF BOTTOM-OF-THE-BARREL
4 INFORMATION OR IS IT SUPER IMPORTANT INFORMATION FOR
5 SHERWIN-WILLIAMS?

6 A. NO, IT'S EXTREMELY IMPORTANT BECAUSE IT'S -- NOBODY
7 HAS THIS KIND OF TECHNOLOGY. NONE OF OUR COMPETITION HAS
8 THIS KIND OF TECHNOLOGY THAT PERFORMS THIS WELL.

9 Q. AND WHAT SORT OF CHALLENGES DID SHERWIN-WILLIAMS
10 OVERCOME DEVELOPING THIS SECRET RECIPE?

11 A. WELL, WE HAD TO SPEND A LOT OF TIME LOOKING FOR A
12 BISPHENOL WHICH WAS NOT ENDOCRINE ACTIVE BY ANY MEASURE;
13 AND ON TOP OF THAT WE HAD TO DETERMINE IF ANY BISPHENOL
14 THAT WE FOUND THAT MET THAT CRITERIA COULD ALSO MAKE A
15 POLYMER, AND THAT, THAT IS EXTREMELY IMPORTANT, AND HAS TO
16 BE A HIGH MOLECULAR WEIGHT LINEAR POLYMER IN ORDER TO
17 PERFORM THE WAY THIS MATERIAL HAS TO PERFORM.

18 Q. AND WHAT SORT OF SCIENCE AND EXPERIMENTATION, HOW
19 COMPLEX IS THE SCIENCE AND EXPERIMENTATION THAT GOES IN TO
20 CREATING THIS RECIPE?

21 A. SO YOU HAVE A LOT OF TOXICOLOGY, REPRODUCTIVE
22 TOXICOLOGY THAT NEEDS TO BE DONE, POLYMER SCIENCE
23 MODELING, COMPUTER MODELING OF THE MOLECULES.

24 Q. AND UNDER THE NON-DISCLOSURE AGREEMENT WAS THERE ANY
25 LEGITIMATE REASON WHATSOEVER FOR THE DEFENDANT TO HAVE

1 THIS INFORMATION AFTER SHE LEFT HER JOB AT COKE?

2 A. NO.

3 Q. WHAT WOULD BE THE VALUE OF A COMPETITOR OR WOULD-BE
4 COMPETITOR OF HAVING THIS SECRET RECIPE?

5 A. SO AS I SAID BEFORE, NOT ONLY DOES IT TELL A
6 COMPETITOR WHAT WE ARE USING SPECIFICALLY AND THE AMOUNTS,
7 IT ALSO TELLS THE COMPETITOR WHAT WE'RE NOT USING. SO
8 IT'S A PROCESS OF ELIMINATION THAT WOULD REQUIRE YEARS AND
9 YEARS OF RESEARCH TO GET TO THE SAME POINT WE ARE NOW.

10 Q. AND COULD A WOULD-BE COMPETITOR CUT OFF THAT YEARS
11 AND YEARS OF RESEARCH BY HAVING THIS INFORMATION?

12 A. ABSOLUTELY.

13 Q. AND HOW -- WHAT PERCENTAGE OF THEIR WAY ALONG THE
14 ROAD TO COMMERCIALIZING A COATING WOULD SOMEONE BE IF THEY
15 JUST CAME UPON THIS INFORMATION OR STOLE IT?

16 A. IF YOU KNEW THAT WE WERE HEADING DOWN THIS PATH AND
17 THAT WE HAD ALREADY DONE ALL THE HOMEWORK TO VET IT OUT,
18 YOU'RE 98 PERCENT OF THE WAY THERE.

19 Q. IS THIS INFORMATION A TRADE SECRET FOR
20 SHERWIN-WILLIAMS?

21 A. YES.

22 MR. HUNTER: COULD YOU PUBLISH THE ELMO,
23 PLEASE.

24 Q. I'M GOING TO SHOW YOU EXHIBIT 35, WHAT'S BEEN
25 PREVIOUSLY MARKED AS EXHIBIT 35 AS A, AS A DEMONSTRATIVE.

1 WE'RE KEEPING TRACK OF THE TESTIMONY ABOUT WHAT
2 INFORMATION IS A TRADE SECRET, SO I -- MR. MALLEN, CAN I
3 MARK EXHIBIT 28A, IS IT YOUR TESTIMONY THAT 28A IS A TRADE
4 SECRET OF SHERWIN-WILLIAMS?

5 A. YES.

6 MR. HUNTER: CAN WE PULL UP EXHIBIT, WHAT'S
7 BEEN PREVIOUSLY ADMITTED AS EXHIBIT 28B.

8 Q. DO YOU RECOGNIZE THIS DOCUMENT?

9 A. YES.

10 Q. WHAT IS THIS?

11 A. THIS IS A COMPOSITION OF A SPRAY COATING FOR THE
12 INSIDE OF BEVERAGE CANS.

13 Q. SO THIS ONE IS FOR THE INSIDE OF THE CAN, IS IT FOR
14 THE END OR FOR THE BODY?

15 A. FOR THE BODY.

16 Q. AND WAS THIS, WAS THIS DOCUMENT MARKED CONFIDENTIAL
17 IN ANY WAY?

18 A. YES, SEVERAL, SEVERAL WAYS.

19 Q. CAN YOU POINT THOSE OUT?

20 A. SO UNDERNEATH THE DATE IN BOLD LETTERS IT SAYS, IN
21 CAPITAL LETTERS IT SAYS, "CONFIDENTIAL PURSUANT TO
22 NON-DISCLOSURE AGREEMENT DATED AUGUST 1, 2012". IT NAMES
23 COCA-COLA CORPORATION AND VALSPAR; AND IT SAYS, "DO NOT
24 COPY".

25 Q. AND ZOOM OUT, WHAT'S THE WATERMARK SAY?

1 A. THE DIAGONAL WATERMARK SAYS "CONFIDENTIAL" IN
2 CAPITAL LETTERS, "DO NOT COPY" AND THEN NDA,
3 "NON-DISCLOSURE AGREEMENT, AUGUST 1, 2012".

4 Q. IS THIS ESSENTIALLY THE SAME TYPE OF SECRET RECIPE
5 INFORMATION WE JUST TALKED ABOUT?

6 A. YES.

7 Q. IS THIS INFORMATION AVAILABLE IN THE PUBLIC DOMAIN
8 IN ANY FORM WHATSOEVER?

9 A. NO.

10 Q. IS THIS A VALSPAR TRADE -- SHERWIN-WILLIAMS TRADE
11 SECRET?

12 A. YES.

13 Q. IS IT VALUABLE FOR THE SAME REASONS WE TALKED ABOUT
14 FOR THE OTHER RECIPE?

15 A. YES.

16 Q. DOES IT HAVE THE SAME VALUE TO A WOULD-BE COMPETITOR
17 AS THE OTHER RECIPE?

18 A. YES.

19 MR. HUNTER: AND SWITCH BACK TO THE ELMO,
20 PLEASE.

21 Q. IF I UNDERSTAND YOUR TESTIMONY, MR. MALLEN, THAT 28B
22 IS A SHERWIN-WILLIAMS TRADE SECRET; IS THAT CORRECT?

23 A. YES.

24 MR. HUNTER: NOW CAN WE GO BACK TO EXHIBIT 28B.

25 Q. DO YOU NOTICE ANYTHING ABOUT THE APPEARANCE OF THIS

1 DOCUMENT?

2 A. YES. IT'S HEAVILY SHADED AS IF IT WAS A PHOTOGRAPH
3 OR OTHER TYPE OF REPRODUCTION TECHNIQUE.

4 Q. YOU PREVIOUSLY TESTIFIED FOR THE OTHER EXHIBIT THAT
5 THAT'S NOT HOW SHERWIN-WILLIAMS KEEPS OR PROVIDES THIS
6 TYPE OF INFORMATION; IS THAT RIGHT?

7 A. CORRECT.

8 MR. HUNTER: IF YOU'LL PULL UP WHAT'S BEEN
9 PREVIOUSLY ADMITTED AS EXHIBIT 28C.

10 Q. DO YOU RECOGNIZE THIS DOCUMENT?

11 A. YES.

12 Q. WHAT IS THIS?

13 A. THIS IS THE MATERIAL COMPOSITION APPROVAL REQUEST
14 FORM, OTHERWISE KNOWN AS MCARF, THAT THE COCA-COLA COMPANY
15 REQUIRES THEIR SUPPLIERS TO FILL OUT BEFORE MATERIAL CAN
16 BE APPROVED FOR QUALIFICATION.

17 Q. AND WHAT SORT OF CAN IS THIS FORM FOR, OR THE
18 COATING INFORMATION -- THE COATING THAT'S DESCRIBED IN
19 THIS FORM, WHAT KIND OF COATING IS IT?

20 A. SO THIS IS A SPRAY COATING, BUT IT'S DIFFERENT FROM
21 THE PREVIOUS SPRAY COATING, AND IT IS DESIGNED FOR THE USE
22 IN WHAT'S KNOWN AS A BOTTLE CAN.

23 Q. WHAT'S A BOTTLE CAN?

24 A. SO A BOTTLE CAN IS AN EXTRUDED ALUMINUM CAN THAT IS
25 FASHIONED WITH A NECK SO THAT IT LOOKS LIKE A BOTTLE.

1 Q. DO THOSE BOTTLE CANS COME WITH THEIR OWN UNIQUE SET
2 OF CHALLENGES FOR THE COATING THAT'S SPRAYED INSIDE OF
3 THEM?

4 A. YEAH. IT'S A VERY EXTREME CHALLENGE FOR --
5 TYPICALLY THERE'S A THREAD, A SCREW THREAD AT THE TOP OF
6 THE NECK, AND THAT -- THE COATING HAS TO SURVIVE THAT
7 NECKING PROCESS AND THE THREADING PROCESS.

8 Q. AND WHAT INFORMATION IS DEPICTED, IF YOU CAN ZOOM IN
9 ON THE TABLE A LITTLE BIT, WHAT INFORMATION IS DEPICTED IN
10 THIS MCARF FORM?

11 A. SO IT LISTS THE INDIVIDUAL COMPONENTS, IT LISTS
12 THEIR CAS NUMBERS, WHAT THEIR FUNCTION IS, THE STATUS
13 WITHIN THE FDA AND THE EU IS THE NEXT ONE; AND THEN IF
14 THERE'S ANY SPECIFIC MIGRATION LIMITS, THEY'RE LISTED
15 THERE AS WELL.

16 Q. NOW, THIS INFORMATION DOES NOT HAVE THE AMOUNTS OF
17 THE INGREDIENTS; CORRECT?

18 A. CORRECT.

19 Q. IS IT FAIR TO CALL THIS -- WE CALLED THE OTHER
20 INFORMATION A RECIPE BECAUSE IT HAD THE AMOUNTS IN IT, IS
21 IT FAIR TO CALL THIS A COMPOSITION?

22 A. CORRECT.

23 Q. IS THIS COMPOSITION EVEN WITHOUT THE AMOUNTS OF THE
24 INGREDIENTS, IS IT A SHERWIN-WILLIAMS TRADE SECRET?

25 A. I WOULD SAY, I WOULD SAY MOST OF IT IS. THE

1 DISCLOSURE OF --

2 Q. I'M ASKING ABOUT THE DOCUMENT IN TOTAL --

3 A. OKAY, THE DOCUMENT IN TOTAL, YES.

4 Q. -- ALL THE INFORMATION IN THIS DOCUMENT, IS THAT IN
5 COMBINATION A SHERWIN-WILLIAMS TRADE SECRET?

6 A. YES.

7 Q. NOW, YOU'RE NOT ASSERTING IN THIS CASE THAT EVERY
8 PIECE OF INFORMATION IN THE DEFENDANT'S POSSESSION THAT
9 BELONGED TO SHERWIN-WILLIAMS IS A TRADE SECRET; CORRECT?

10 A. NO, IT'S JUST THERE FOR COMPLETENESS.

11 Q. IF WE COULD LOOK AT THE TOP OF -- HOW IS THIS
12 DOCUMENT MARKED?

13 A. IT'S CONFIDENTIAL IN BOLD LETTERS.

14 Q. DID ANYONE AT COKE EVER TELL YOU YOU SHOULDN'T BE
15 USING A CONFIDENTIALITY DESIGNATION FOR THIS
16 INFORMATION --

17 A. NO.

18 Q. -- THAT IT WAS IN THE PUBLIC DOMAIN?

19 A. NO.

20 Q. DO YOU NOTICE ANYTHING ABOUT HOW THIS DOCUMENT
21 APPEARS, JUST GENERALLY?

22 A. IT'S VERY GRAINY. IT'S GOT RIBS THAT RUN THROUGH
23 THE BACKGROUND AS IF -- AND THEY'RE NOT LINED UP WITH THE
24 PAGE, SHADOWED AT THE BOTTOM. SO, AGAIN, IT LOOKS LIKE
25 ANOTHER FACSIMILE OF A DOCUMENT.

1 Q. DOES SHERWIN-WILLIAMS PROVIDE MCARF INFORMATION TO
2 THE SRA GROUP AS A PHOTO OF A DOCUMENT?

3 COURT REPORTER: CAN YOU REPEAT THAT.

4 Q. DOES COKE PROVIDE INFORMATION TO THE SRA GROUP IN
5 THESE MCARF FORMS AS A PHOTOGRAPH OF A MCARF FORM?

6 A. NO.

7 Q. UNDER THE NON-DISCLOSURE AGREEMENT IS THERE ANY
8 LEGITIMATE REASON FOR THE DEFENDANT TO HAVE THIS
9 INFORMATION AFTER LEAVING COKE?

10 A. NO.

11 Q. HOW VALUABLE IS THIS INFORMATION, THIS COMPOSITION,
12 EVEN WITHOUT THE AMOUNT OF INGREDIENTS TO
13 SHERWIN-WILLIAMS?

14 A. EXTREMELY IMPORTANT.

15 Q. AND DO YOU NOTICE ANYTHING UP AT THE TOP ON THE, THE
16 DOCUMENT? I CIRCLED IT HERE ON THE COMPUTER SCREEN. DO
17 YOU NOTICE ANYTHING?

18 A. I DON'T SEE ANYTHING THERE.

19 OH, I SEE A LITTLE, ON THE HARD COPY, YEAH, I
20 SEE A CURSOR ERROR.

21 Q. WHAT DOES THAT INDICATE TO YOU?

22 A. THAT THIS IS LIKELY BEING PROJECTED ON SOME SORT OF
23 COMPUTER SCREEN OR OTHER SCREEN THAT'S HOOKED TO A
24 COMPUTER.

25 Q. ARE THERE PHOTOGRAPHS -- WOULD THAT, WOULD THAT

1 PICTURE OF A MOUSE CURSOR BE ON SHERWIN-WILLIAMS' COPY OF
2 THIS DOCUMENT?

3 A. NO.

4 Q. WHAT WOULD BE THE VALUE TO A COMPETITOR OR WOULD-BE
5 COMPETITOR HAVING THIS LIST OF INGREDIENTS AND ALL OF THE
6 INGREDIENTS TOGETHER IN ONE PLACE, EVEN WITHOUT THE
7 AMOUNTS OF THOSE INGREDIENTS?

8 A. IT, IT CERTAINLY GIVES THEM A TREMENDOUS ADVANTAGE
9 IN UNDERSTANDING WHAT THE COMPONENTS ARE THAT ARE
10 NECESSARY TO ACHIEVE THE KIND OF PERFORMANCE THAT WE
11 DISCOVERED.

12 Q. AND YOU TESTIFIED BEFORE THAT WITH THE INGREDIENTS
13 THEY'D BE OVER 90 PERCENT OF THE WAY TO A COMMERCIAL
14 COATING, HOW FAR ALONG WOULD A WOULD-BE COMPETITOR BE IF
15 THEY STOLE THIS INFORMATION WITHOUT THE INGREDIENTS,
16 WITHOUT THE AMOUNTS OF THE INGREDIENTS?

17 A. I WOULD SAY YOU WERE 80 PERCENT OF THE WAY THERE.

18 MR. HUNTER: WOULD YOU PULL UP WHAT'S
19 PREVIOUSLY BEEN ADMITTED AS EXHIBIT 28D.

20 Q. DO YOU RECOGNIZE THIS E-MAIL?

21 A. YES.

22 Q. WHAT'S, WHAT'S HAPPENING IN THIS E-MAIL, WHO SENT
23 THIS?

24 A. SO DAVID RIDDLE SENT THIS. DAVID RIDDLE IS A
25 TECHNICAL MANAGER. HE WAS THE TECHNICAL MANAGER

1 RESPONSIBLE FOR OUR, OUR FORMULATION GROUP THAT FORMULATED
2 THE BEVERAGE COATINGS.

3 Q. AND WHO WAS HE SENDING THIS E-MAIL TO?

4 A. TO SHANNON YOU.

5 Q. DID HE SEND IT TO ANYBODY ELSE?

6 A. BILL BIRNIE, WHO WAS OUR MARKETING MANAGER FOR
7 BEVERAGE.

8 Q. WHERE DOES HE WORK?

9 A. HE'S NO LONGER WITH US, BUT HE DID WORK IN
10 ENGLAND.

11 Q. FOR SHERWIN-WILLIAMS?

12 A. FOR VALSPAR.

13 Q. FOR VALSPAR. SO SHANNON YOU WAS THE ONLY PERSON AT
14 COKE WHO RECEIVED THIS E-MAIL; IS THAT CORRECT?

15 A. YES.

16 Q. AND I SEE THERE'S AN ATTACHMENT HERE; IS THAT RIGHT?

17 A. YES.

18 Q. HOW IS THIS E-MAIL MARKED?

19 A. CONFIDENTIAL.

20 Q. WHERE DID IT INDICATE CONFIDENTIALITY?

21 A. IN THE ATTACHMENTS, IN THE ATTACHMENT LINE, AS WELL
22 AS AT THE HEAD OF THE TEXT OF THE E-MAIL.

23 Q. AND WHAT DOES IT SAY DOWN HERE AT THE BOTTOM, CAN
24 YOU READ THAT?

25 A. IT SAYS, THIS TRANSMISSION MAY CONTAIN CONFIDENTIAL

1 OR PRIVILEGED INFORMATION. UNAUTHORIZED USE IS
2 PROHIBITED. TRANSACTIONS ARE SUBJECT TO THE TERMS FOUND
3 AT HTTP WWW.COATINGS.COM NOTICE.JSP.

4 Q. CAN YOU JUST READ THE FIRST SENTENCE OF THE E-MAIL.

5 A. "PLEASE FIND THE INFO YOU REQUESTED ON SLIDE 2."

6 Q. IT SAYS, "YOU REQUESTED", WHO IS HE REFERRING TO TO
7 YOUR KNOWLEDGE?

8 A. SHANNON YOU.

9 MR. HUNTER: CAN WE OPEN EXHIBIT, WHAT HAS
10 PREVIOUSLY BEEN ADMITTED AS 28E.

11 Q. IS THIS THE ATTACHMENT TO THE E-MAIL WE JUST
12 REVIEWED?

13 A. YES.

14 Q. NOW, THIS IS -- WHAT IS THIS, WHAT IS THIS DOCUMENT?

15 A. THIS IS A PRESENTATION TO A CAN MAKER WHO NO LONGER,
16 WHO HAS BEEN ACQUIRED BY ANOTHER COMPANY. IT'S CALLED
17 REXAM OUT OF CHICAGO.

18 MR. HUNTER: AND CAN WE GO TO SLIDE 2.

19 Q. WHAT IS THE INFORMATION DEPICTED HERE ON SLIDE 2?

20 A. SO THIS IS A COMPOSITION WITH AMOUNTS OF, CHEMICAL
21 COMPOSITION WITH THE RELATIVE AMOUNTS FOR XXXXX, WHICH IS
22 A BEVERAGE SPRAY COATING. WE CALL IT THE GENERATION ONE
23 AND A HALF BEVERAGE COATING.

24 Q. IS THIS THE V40?

25 A. YES.

1 Q. AND YOU REFERRED TO THIS AS A COMPOSITION, BUT THIS
2 IS ACTUALLY -- IN THE TERMS WE DEFINED THIS IS ACTUALLY A
3 RECIPE, CORRECT, BECAUSE IT INCLUDES THE AMOUNTS OF THE
4 INGREDIENTS?

5 A. YES.

6 Q. SO LET'S JUST GO THROUGH THAT. WHAT IS THE
7 INFORMATION ON THE LEFT?

8 A. SO ON THE LEFT IT'S THE CHEMICALS, THE CHEMICAL
9 DESCRIPTION OF THE INDIVIDUAL COMPONENTS.

10 Q. AND WHAT'S THE INFORMATION IN THIS MIDDLE COLUMN?

11 A. THE MIDDLE COLUMN IS ON A 100 PERCENT BASIS THE
12 AMOUNT OF EACH OF THESE COMPONENTS.

13 Q. AND WHAT'S THE INFORMATION IN THE RIGHT-HAND
14 COLUMN?

15 A. THE RIGHT-HAND COLUMN SPLITS THE, THE COMPOSITION
16 BETWEEN THE MATERIALS THAT ARE GOING TO GIVE WHAT WE CALL
17 SOLIDS, SOLID MATERIAL WITHIN THE COATING, AND THEN
18 UNDERNEATH THAT THE LIQUID PART PORTION OF THE COATING,
19 AND BREAKS THEM OUT.

20 Q. AND THESE -- THIS INFORMATION IN THE MIDDLE ALL ADDS
21 UP TO 100 PERCENT; IS THAT RIGHT?

22 A. YES.

23 Q. IS THIS INFORMATION A TRADE SECRET FOR
24 SHERWIN-WILLIAMS?

25 A. YES.

1 MR. HUNTER: ALL RIGHT. COULD WE PULL UP THE
2 ELMO AGAIN, PLEASE.

3 Q. AND I THINK YOU PREVIOUSLY TESTIFIED THAT THE MCARF
4 AT EXHIBIT 28C IS A SHERWIN-WILLIAMS TRADE SECRET; IS THAT
5 CORRECT?

6 A. YES.

7 Q. AND YOU JUST TESTIFIED THAT THE EXHIBIT ATTACHED TO
8 THE E-MAIL AT 28D, THE ATTACHMENT WHICH WAS 28E, THAT 28E
9 IS A TRADE SECRET; IS THAT CORRECT?

10 A. YES.

11 MR. HUNTER: OKAY. PULL UP EXHIBIT 8F.

12 Q. ANY -- MR. MALLEN, THIS EXHIBIT HAS BEEN PREVIOUSLY
13 ADMITTED AS EXHIBIT 8F, AND WHAT YOU HAVE IN FRONT OF YOU
14 IN PAPER, I BELIEVE, HAS SOME REDACTIONS ON IT; IS THAT
15 RIGHT?

16 A. 28F, NO.

17 Q. 8F, SORRY. 8F.

18 A. OH, 8F. 8F.

19 OH, YES, HERE IT IS. IT'S ALL REDACTED.

20 Q. RIGHT. NOW, THIS DOCUMENT CONTAINS OTHER COMPANIES'
21 INFORMATION, BUT IF YOU GO TO THE BOTTOM, TO THE END OF
22 THE DOCUMENT, I BELIEVE YOU'LL FIND VALSPAR INFORMATION.
23 I THINK IF YOU GO TO PAGE 24.

24 A. YEAH.

25 Q. DO YOU RECOGNIZE THE INFORMATION STARTING AT PAGE 24

1 AND GOING TO THE END OF THE DOCUMENT?

2 A. YES.

3 MR. HUNTER: IF WE COULD JUST SCROLL TO THE
4 BOTTOM.

5 Q. WHAT IS THIS INFORMATION?

6 A. SO IT LOOKS LIKE A CONVERSATION, AN E-MAIL
7 CONVERSATION BETWEEN CHUCK SKILLMAN, WHO WAS THE MANAGER
8 OF OUR TECHNICAL FORMULATING GROUP FOR BEVERAGE ENDS, WITH
9 SHANNON YOU, A COPY TO MARK HESSELING, WHO WAS A MARKET
10 MANAGER FOR BEVERAGE.

11 Q. IF WE START AT THE VERY BOTTOM OF THE DOCUMENT, THEN
12 TO THE TOP, VERY BOTTOM OF THE DOCUMENT AND WORK OUR WAY
13 UP, IF WE COULD GO TO PAGE 29, WHAT'S THIS AT THE BOTTOM,
14 MARCH 15, 2014?

15 A. IT'S A QUESTION FROM SHANNON YOU ABOUT WHAT IS XXXXX
16 XXXX IN YOUR FORMULATION.

17 Q. WHY WOULD SHE ASK THAT QUESTION?

18 A. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
19 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
20 XXXXXXXXXXXXXXXXXXXXXXX.

21 Q. AND DID DAVE RIDDLE ANSWER HER QUESTION?

22 A. HE SAID, SORRY FOR USING OUR SHORTHAND TERM WE USE
23 AT VALSPAR. IT'S XXXXXXXXXXXXXXXXXXXXXXX.

24 MR. HUNTER: AND IF WE COULD GO TO THE TOP OF
25 THE PAGE, MAYBE SCROLL DOWN SO WE'LL SEE THE HEADER.

1 Q. WHAT IS THIS NEXT E-MAIL?

2 A. SO THIS IS FROM SHANNON YOU.

3 Q. WHAT'S THE DATE OF THAT?

4 A. FEBRUARY 10, 2016.

5 Q. AND WHAT DOES SHE -- WHAT'S THE CONTENTS OF THIS
6 E-MAIL?

7 A. SHE ACKNOWLEDGES THAT, OKAY, IS THERE ANY -- AND
8 THEN SHE ASKS ANOTHER QUESTION, IS THERE ANY CATALYST USED
9 IN THE CURING PROCESS.

10 Q. SHE'S ASKING TECHNICAL QUESTIONS ABOUT THE
11 FORMULATION?

12 A. YES.

13 MR. HUNTER: SCROLL UP TO THE NEXT.

14 Q. CAN YOU SEE THIS E-MAIL FROM DAVE RIDDLER?

15 A. YEAH.

16 Q. WHEN DID HE SEND THAT E-MAIL?

17 A. FEBRUARY 10, 2016.

18 Q. WHO DID HE SEND IT TO?

19 A. THE DEFENDANT.

20 Q. HOW DID HE MARK HIS RESPONSE?

21 A. IN RED, CONFIDENTIAL, COCA-COLA/VALSPAR.

22 Q. WHAT DID HE SAY JUST GENERALLY?

23 A. HE SAID --

24 Q. IS HE ANSWERING HER QUESTION FROM THE PREVIOUS
25 E-MAIL?

1 A. YES.

2 MR. HUNTER: GO UP TO THE NEXT, AND IF WE CAN
3 JUST SCROLL UP UNTIL THERE'S ANOTHER E-MAIL THAT'S MARKED
4 CONFIDENTIAL. CONTINUE SCROLLING UP. ALL RIGHT, STOP.
5 SCROLL DOWN A LITTLE BIT, AND DOWN A LITTLE MORE.

6 Q. DO YOU SEE THIS E-MAIL FROM SHANNON YOUNG?

7 A. YES.

8 Q. WHAT'S THE DATE ON THAT E-MAIL?

9 A. FEBRUARY 9, 2016.

10 Q. AND WHAT IS THE CONTENTS OF THAT E-MAIL FROM SHANNON
11 YOUNG TO DAVE RIDDLE?

12 A. SO SHE'S LOOKING FOR SOME INFORMATION ABOUT THE
13 INSIDE SPRAY COATING, WHAT IS THE CROSS-LINKER FOR THIS
14 COATING, AND WHAT IS THE FUNCTION FOR XXXXXXXXXXXX.

15 MR. HUNTER: CAN WE GO UP.

16 Q. DID DAVE RIDDLE RESPOND TO HER?

17 A. YES.

18 Q. WHEN DID HE RESPOND TO HER?

19 A. FEBRUARY 10TH.

20 Q. DID HE MARK HIS RESPONSE AS CONFIDENTIAL?

21 A. YES.

22 Q. WHAT DID HE TELL HER? DID HE ANSWER HER QUESTION?

23 A. YES.

24 Q. WAS THAT TECHNICAL INFORMATION THEY WERE SPEAKING
25 ABOUT?

1 A. YES.

2 Q. WAS THE INFORMATION MARKED CONFIDENTIAL IN THIS
3 EXHIBIT 8F THAT'S CALLED COMBINE.DOCX --

4 A. YES.

5 Q. -- A VALSPAR TRADE SECRET?

6 A. YES.

7 MR. HUNTER: IF YOU CAN PULL UP THE ELMO AGAIN,
8 PLEASE.

9 Q. YOU JUST TESTIFIED THAT THE VALSPAR INFORMATION
10 MARKED CONFIDENTIAL IN EXHIBIT 8F IS A
11 VALSPAR/SHERWIN-WILLIAMS TRADE SECRET?

12 A. YES.

13 Q. NOW, TO THE BEST OF YOUR KNOWLEDGE DO YOUR
14 COMPETITORS HAVE ANY OF THE INFORMATION, THE RECIPES, THE
15 SECRET RECIPES OR THE MCARF INFORMATION THAT WE'VE MARKED
16 AS EXHIBITS 28A, B, C AND D AND 8F THAT YOU JUST TESTIFIED
17 WERE TRADE SECRETS, DO YOUR COMPETITORS HAVE ANY OF THAT,
18 THOSE TRADE SECRETS?

19 A. NO.

20 Q. AND YOU HAVE SOME PRETTY FIERCE COMPETITION; DON'T
21 YOU?

22 A. YES.

23 Q. WHO ARE SOME OF YOUR MAIN COMPETITORS?

24 A. PPG, AKZO-NOBEL, METLAC, ACTEGA.

25 Q. ARE YOU INVOLVED WITH ANY LITIGATION REGARDING, WITH

1 ANY OF THOSE COMPETITORS REGARDING THESE COATINGS?

2 A. WE'RE INVOLVED IN A PATENT INFRINGEMENT CASE WITH
3 PPG.

4 Q. WHAT'S THE NATURE OF THE COMPETITION BETWEEN
5 SHERWIN-WILLIAMS AND PPG?

6 A. IT'S VERY INTENSE.

7 Q. HOW INTENSE?

8 A. WELL, IT'S -- WE'RE COMPETING OVER EVERY SINGLE BIT
9 OF BUSINESS THAT IS IN THE MARKETPLACE.

10 Q. DESPITE THAT FIERCE COMPETITION, IF I PULLED UP FOR
11 YOU RIGHT NOW A PPG RECIPE THAT SHOWED ALL THE INGREDIENTS
12 AND ALL THE AMOUNTS OF THOSE INGREDIENTS THAT MAKE A PPG
13 COATING, WOULD YOU THINK YOU'RE LOOKING AT A TRADE SECRET?

14 A. YES.

15 Q. EVEN THOUGH THEY'RE YOUR FIERCE COMPETITOR, YOU
16 WOULD SAY THAT THAT WAS A TRADE SECRET?

17 A. YEAH, THAT WOULD BE ESSENTIALLY THE JEWELS TO THE
18 KINGDOM AND AN UNETHICAL PERSON WOULD BE ABLE TO EXPLOIT
19 THAT.

20 Q. NOW, HOW MUCH MONEY DID PP, PP -- ALL RIGHT,
21 SWITCHING COMPANIES. HOW MUCH MONEY DID SHERWIN-WILLIAMS
22 INVEST IN CREATING THE VALPURE LINE OF BPA-FREE COATINGS?

23 A. OVER \$30,000,000.

24 Q. AND THAT WAS JUST RESEARCH AND DEVELOPMENT EXPENSE?

25 A. CORRECT.

1 Q. HOW MUCH MONEY HAS PPG INVESTED IN CREATING
2 FACTORIES AND MANUFACTURING FACILITIES TO CREATE AND
3 MANUFACTURE AT MASS SCALE THE VALPURE LINE OF COATINGS?
4 DID I SAY PPG?

5 A. DO YOU MEAN SHERWIN?

6 Q. DID SHERWIN-WILLIAMS -- I'M SORRY, THERE'S A LOT OF
7 COMPANIES IN THIS CASE. HOW MUCH MONEY HAS
8 SHERWIN-WILLIAMS INVESTED IN CREATING FACTORIES AND
9 MANUFACTURING FACILITIES TO PRODUCE VALPURE ON THAT
10 SCALE?

11 A. XXXXXXXXXXXXXXXXXXXX.

12 Q. I'D LIKE TO TALK BRIEFLY ABOUT THE MEASURES THAT
13 SHERWIN-WILLIAMS EMPLOYS TO PROTECT ITS INTELLECTUAL
14 PROPERTY. ARE YOU FAMILIAR WITH THE PHYSICAL OR
15 ELECTRONIC AND NETWORK SECURITY --

16 A. YES.

17 Q. -- MEASURES THAT THE COMPANY USES?

18 A. YES, AS A LAY PERSON.

19 Q. WHAT, WHAT SORT OF PHYSICAL SECURITY MEASURES WOULD
20 YOU ENCOUNTER IF YOU WERE TRYING TO GET INTO A
21 SHERWIN-WILLIAMS' BUILDING THAT, WHERE YOU COULD ACCESS
22 THIS TYPE OF INFORMATION, THE SECRET PRECIPICE WE
23 REVIEWED?

24 A. SO THE, ALL THE OUTDOOR DOORS ARE, EXTERNAL DOORS OF
25 THE BUILDINGS ARE KEY CARD ACCESS ONLY; AND THEN

1 INTERNALLY, ESPECIALLY IN THE LAB AREAS, THE DOORS TO THE
2 LABORATORY ARE ALSO KEY ACCESS, KEY CARD ACCESS ONLY.

3 Q. ARE THERE GUARDS USED AT ANY TIME TO PROTECT THOSE
4 FACILITIES?

5 A. YES, AT OFF HOURS WHEN THERE'S NOT A LOT OF PEOPLE
6 AROUND.

7 Q. WHAT ABOUT LABORATORY NOTEBOOKS THAT SCIENTISTS USE,
8 ARE THOSE PROTECTED IN ANY WAY?

9 A. YES. AS SOON AS THOSE ARE FILLED UP THOSE ARE
10 COLLECTED AND SECURED IN A, WITH A COMPANY CALLED IRON
11 MOUNTAIN THAT STORES THEM IN AN OLD MUSHROOM MINE
12 SOMEWHERE.

13 Q. AND HOW ABOUT PHOTOGRAPHY, ARE PEOPLE PERMITTED TO
14 TAKE PHOTOGRAPHS WITHIN SHERWIN-WILLIAMS' FACILITIES OR
15 LABORATORIES?

16 A. NOT WITHOUT SPECIFIC PERMISSION.

17 Q. WHY NOT?

18 A. WELL, FIRST AND FOREMOST, IT CAN BE A SAFETY HAZARD
19 WHERE WE ARE DEALING WITH CHEMICALS, VOLATILE CHEMICALS,
20 SOLVENTS, THINGS LIKE THAT, AND SO ANY KIND OF
21 PHOTOGRAPHIC EQUIPMENT WOULD NEED TO BE INTRINSICALLY
22 SAFE; BUT ALSO THOSE PHOTOGRAPHS CAN, YOU KNOW, CAPTURE
23 MATERIAL -- CAPTURE INFORMATION THAT WE WOULD RATHER NOT
24 HAVE IN THE PUBLIC DOMAIN.

25 Q. HOW EASY IS IT TO GET A WET SAMPLE OF A VALPURE

1 COATING?

2 A. UNLESS THERE'S SOME EXTRAORDINARY AGREEMENT FOR
3 PURPOSES OF, YOU KNOW, SOMETHING OF INTEREST TO US, WE
4 DON'T PROVIDE WET SAMPLES OF OUR COATINGS TO ANYONE OTHER
5 THAN OUR DIRECT CUSTOMERS.

6 Q. ARE YOU FAMILIAR WITH THE TERM "NON-ANALYSIS
7 AGREEMENT"?

8 A. YES.

9 Q. WHAT IS A NON-ANALYSIS AGREEMENT?

10 A. SO IT PROHIBITS THE SIGNER FROM HAVING SOMEONE TAKE
11 A LOOK AT THE COATING TO TRY TO DETERMINE WHAT ITS
12 COMPONENTS ARE THROUGH WET CHEMISTRY OR INSTRUMENTAL
13 ANALYSIS.

14 Q. AND EVEN IF SOMEONE VIOLATED ONE OF THOSE AGREEMENTS
15 AND TRIED TO DO SOME OF THAT ANALYSIS, COULD THEY EASILY
16 RECREATE THE SECRET RECIPES THAT WE REVIEWED?

17 A. NO. IT'S VERY DIFFICULT.

18 Q. IS IT EVEN POSSIBLE TO GET TO THAT SAME LEVEL OF
19 DETAIL?

20 A. NO. I MEAN, THE, THE AMOUNT OF EFFORT THAT IT WOULD
21 REQUIRE WOULD BE PROHIBITIVE.

22 Q. NOW, HOW ABOUT NETWORK AND COMPUTER SECURITY AT
23 SHERWIN-WILLIAMS, WHAT DOES IT TAKE TO LOG INTO A COMPUTER
24 AT SHERWIN-WILLIAMS, COMPANY COMPUTER?

25 A. SO YOU HAVE TO HAVE A BOOT PASSWORD THAT PREVENTS

1 ANYONE FROM HACKING INTO THE COMPUTER UNLESS THEY HAVE
2 THAT PASSWORD, AND THEN SUBSEQUENTLY YOU NEED A PASSWORD
3 THAT IS SPECIFIC TO YOU, AND IT'S CHANGED EVERY XXXXXX.

4 Q. AND ARE YOU ALLOWED TO SEND FORMULATIONS, SECRET
5 RECIPE INFORMATION LIKE WE REVIEWED OVER E-MAIL?

6 A. NO.

7 Q. HOW ABOUT DO THE COMPUTERS JUST STAY ON, IF YOU
8 LEAVE A COMPUTER ON, WILL IT -- IF YOU HAVE A SECRET
9 RECIPE ON THERE, WOULD IT JUST STAY ON YOUR SCREEN FOR A
10 LONG TIME?

11 A. NO. THERE'S A SCREEN SAVER, WHICH IF IT DOESN'T
12 DETECT ANY KIND OF ACTIVITY, IT WILL SWITCH TO A SCREEN
13 THAT REQUIRES YOU TO LOG BACK IN.

14 Q. TYPE IN YOUR PASSWORD AGAIN?

15 A. YES.

16 Q. HOW ABOUT USB PERSONAL DEVICES, STORAGE DEVICES THAT
17 YOU MIGHT PLUG INTO A COMPUTER, CAN YOU USE THOSE ON A
18 SHERWIN-WILLIAMS COMPUTER?

19 A. NO. THOSE HAVE BEEN BANNED, AND EVERYTHING IS
20 NETWORKED TO PREVENT THAT.

21 Q. ARE YOU FAMILIAR WITH THE XXXXXX SYSTEM?

22 A. YES.

23 Q. WHAT'S THE XXXXXX SYSTEM?

24 A. IT'S A FORMULATION SYSTEM WHICH ALLOWS FORMULATORS
25 TO SELECT FROM RAW MATERIALS TO BUILD A FORMULA AND THEN

1 TO SEARCH FOR ALTERNATIVES THEY MIGHT CONSIDER USING.

2 Q. DOES EVERYONE IN THE COMPANY HAVE ACCESS TO THAT
3 SYSTEM?

4 A. NO.

5 Q. DOES EVERYONE IN THE COMPANY HAVE ACCESS TO THE
6 SECRET RECIPES THAT WE REVIEWED?

7 A. NO.

8 Q. DOES SHERWIN-WILLIAMS' IT DEPARTMENT USE ANY
9 SOFTWARE TO DETECT SUSPICIOUS BEHAVIOR ON THE NETWORK?

10 A. YEAH. THERE'S A SOFTWARE PROGRAM CALLED XXXXXXXX
11 XXXXXXXX WHICH MONITORS EVERY KEYSTROKE THAT'S MADE, AND
12 IF THERE ARE SUSPICIOUS, IF THERE IS SUSPICIOUS ACTIVITY,
13 THEY WILL FOLLOW UP ON IT.

14 Q. HOW ABOUT TRAINING AT SHERWIN-WILLIAMS, DOES
15 SHERWIN-WILLIAMS REQUIRE TRAINING OF ITS EMPLOYEES IN
16 INFORMATION SECURITY?

17 A. YES.

18 Q. WHAT SORT OF TRAINING?

19 A. WELL, ONE OF THE THINGS IS THAT THEY HAVE US ALL GO
20 THROUGH CODE OF CONDUCT TRAINING WHICH INVOLVES OUR
21 RESPONSIBILITIES IN TERMS OF PROTECTING SENSITIVE
22 INFORMATION.

23 Q. AND WOULD SHERWIN-WILLIAMS EVER PROVIDE THE SECRET
24 RECIPE COMPOSITIONS THAT WE REVIEWED TO ANYONE OUTSIDE OF
25 THE COMPANY WITHOUT A NON-DISCLOSURE AGREEMENT IN PLACE?

1 A. NO.

2 Q. I JUST WANT TO SWITCH YOUR ATTENTION TO CHINA FOR A
3 MOMENT. DOES SHERWIN-WILLIAMS HAVE FACTORIES IN CHINA?

4 A. YES.

5 Q. DO ANY OF THOSE FACTORIES MANUFACTURE THE VALPURE
6 LINE OF BPA-FREE PRODUCTS?

7 A. NO.

8 Q. WHY NOT?

9 A. THEY'RE TOO SENSITIVE TO, TO HAVE AT THE
10 MANUFACTURING SITES IN THAT REGION.

11 Q. AND WHY, WHY IS IT TOO SENSITIVE TO HAVE IN THAT
12 REGION?

13 A. THE, THE INTEGRITY OF THE, THE FORMULAS ARE AT RISK.

14 Q. HOW COME?

15 A. BECAUSE IF OPERATORS ARE PUTTING THESE PRODUCTS
16 TOGETHER, THEN THEY KNOW THE INGREDIENTS AND THEY KNOW HOW
17 MUCH IS USED, THEY HAVE A RECIPE TO WORK FROM IN ORDER TO
18 MAKE THE PRODUCT.

19 Q. SO YOU DON'T ALLOW THAT TO BE MANUFACTURED IN CHINA,
20 BUT YOU DO ALLOW IT TO BE MANUFACTURED IN THE UNITED
21 STATES?

22 A. IN THE UNITED STATES AND IN SINGAPORE IN THE ASIAN
23 REGION.

24 Q. DO ANY EMPLOYEES AT THE FACTORY IN CHINA HAVE ACCESS
25 TO THE SECRET RECIPES WE REVIEWED?

1 A. ONLY ONE, THE DIRECTOR OF TECHNOLOGY WHO IS LOCATED
2 IN SINGAPORE, HE HAS ACCESS TO IT.

3 Q. DOES HE ACCESS THAT THROUGH THE XXXXXX SYSTEM?

4 A. YES.

5 Q. IS THAT A SECURE SYSTEM?

6 A. YES.

7 Q. NOW, IN YOUR ROLE AS A VICE-PRESIDENT OF COMPLIANCE
8 AND TECHNOLOGY MARKETING, ARE YOU FAMILIAR WITH HOW
9 SHERWIN-WILLIAMS USES PATENTS AND TRADE SECRETS TO PROTECT
10 ITS INTELLECTUAL PROPERTY AND COATINGS?

11 A. YES.

12 Q. AND ARE THE SECRET PRECIPICE THAT WE REVIEWED AND
13 THE COMPOSITIONS, THAT INFORMATION CONSIDERED ALTOGETHER,
14 IS THAT IN ANY PATENT THAT SHERWIN-WILLIAMS PUBLISHES?

15 A. NO.

16 Q. WHAT, WHAT KIND OF INFORMATION DOES SHERWIN-WILLIAMS
17 PUT IN PATENTS AS, THAT MAKES IT DIFFERENT FROM THE TRADE
18 SECRETS THAT WE REVIEWED?

19 A. SO SHERWIN-WILLIAMS PATENTS AT A VERY EARLY STAGE OF
20 DEVELOPMENT, AND USUALLY AT THAT TIME THE ONLY THING
21 THAT'S DEVELOPED AND FOR CERTAIN ARE, IS THE POLYMER, SO
22 THE MAIN POLYMER, AND WE ONLY PATENT IT, AND WE ARE ONLY
23 ALLOWED TO PATENT IT IF IT'S NOVEL, AND SO THE PATENTS
24 HAVE TO TEACH THAT INFORMATION TO THE GENERAL -- TO THE
25 PUBLIC IN ORDER TO GET A PATENT; AND THEN EVERYTHING ELSE

1 THAT COMES AFTER THAT IN TERMS OF DEVELOPMENT, WHICH IS
2 THE, THE COINGREDIENTS, THE WAY THE MATERIAL IS MADE, THE
3 WAY IT'S MANUFACTURED, WHICH INGREDIENT IS PUT IN FIRST,
4 WHICH INGREDIENT IS COOKED AT A CERTAIN TEMPERATURE UNTIL
5 IT'S READY TO BE MADE, ALL OF THAT INFORMATION IS TRADE
6 SECRET INFORMATION THAT IS NOT DISCLOSED IN THE PATENTS.

7 Q. AND IS THAT INFORMATION IN THE WORK TO GET TO THAT
8 INFORMATION, IS THAT REFLECTED IN THE TRADE SECRETS THAT
9 WE REVIEWED?

10 A. SOME OF IT IS.

11 Q. HOW MUCH WORK DOES IT TAKE TO GO FROM WHAT'S IN A
12 SHERWIN-WILLIAMS PATENT TO GET TO THE FINAL PRODUCT, AN
13 ACTUAL COATING, HOW MUCH SCIENCE IS INVOLVED IN THAT?

14 A. YEARS AND YEARS.

15 MR. HUNTER: CAN WE PULL UP FOR THE WITNESS
16 ONLY EXHIBIT 320.

17 Q. ARE YOU FAMILIAR WITH THIS DOCUMENT?

18 A. YES.

19 Q. WHAT IS IT?

20 A. THIS IS A, A PATENT BY THE COCA-COLA COMPANY NAMING
21 THE DEFENDANT, YU SHI AND LINDA LIU.

22 Q. AND THEIR NAMES IS IN WHAT CAPACITY ON THIS PATENT?

23 A. AS INVENTORS.

24 MR. HUNTER: YOUR HONOR, AT THIS TIME THE
25 GOVERNMENT MOVES TO PUBLISH AND ADMIT 320.

1 THE COURT: ALL RIGHT. 320 IS ADMITTED AND MAY
2 BE PUBLISHED.

3 Q. HAVE YOU REVIEWED THIS PATENT PRIOR TO THIS CASE?

4 A. YES.

5 Q. WHAT'S THE, WHAT'S THE TITLE OF THIS PATENT?

6 A. POLYMER COMPOSITIONS AND COATINGS FOR FOOD AND
7 BEVERAGE PACKAGING.

8 Q. WHAT DATE WAS THIS PATENT ISSUED?

9 A. IT WAS ISSUED APRIL 23, 2019.

10 Q. AND YOU MENTIONED PREVIOUSLY THE NAMED INVENTORS ON
11 THIS PATENT, WHO ARE THEY AGAIN?

12 A. THE DEFENDANT -- WELL, THEY'RE ALL COCA-COLA
13 EMPLOYEES, THE DEFENDANT, HER BOSS, YU SHI, AND LINDA
14 LIU.

15 Q. NOW, THOSE ARE THE OWNERS -- SORRY, THOSE ARE THE
16 INVENTORS OF THE PATENT, WHO OWNS THE PATENT?

17 A. COCA-COLA, COCA-COLA COMPANY.

18 Q. TO THE BEST OF YOUR KNOWLEDGE DOES XIAORONG YOU HAVE
19 ANY RIGHTS TO THIS PATENT?

20 A. NO.

21 Q. DOES YU SHI?

22 A. NO.

23 Q. WHAT -- DID YOU REVIEW THIS PATENT TO TRY TO
24 DETERMINE WHAT WAS THE SUPPOSED INVENTION?

25 A. YES.

1 Q. WHAT DID YOU DETERMINE -- WHAT INVENTION DOES THIS,
2 OR PURPORTED INVENTION DOES THIS PATENT DESCRIBE?

3 A. WELL, IT --

4 Q. OR LET ME REPHRASE THAT. WHAT PURPORTED INVENTION
5 DOES THIS PATENT CLAIM AS A LEGAL RIGHT?

6 A. IT CLAIMS THAT TWO INGREDIENTS, ONE A CYCLIC ETHER
7 AND ONE AN ACRYLATE, IN COMBINATION WITH OTHER MATERIALS
8 COULD BE USED AS A BEVERAGE COATING TO LIMIT THE AMOUNT OF
9 SCALPING THAT OCCURS OUT OF THE FLAVOR OF A, OF A
10 BEVERAGE.

11 Q. AND WHEN YOU REVIEWED THIS PATENT, WHAT WAS YOUR
12 IMPRESSION OF THE INFORMATION DISCLOSED IN THIS PURPORTED
13 INVENTION?

14 A. SO ON THE ONE HAND THE DESCRIPTION WITHIN THE BODY
15 OF THE PATENT IS VERY BROAD, VERY AMORPHOUS, WHEREAS THE
16 CLAIMS ARE VERY SPECIFIC, AND IT, IT LOOKED TO ME LIKE IT
17 WAS SORT OF A JUMBLED-UP GRAB BAG OF INFORMATION STUFFED
18 INTO A PATENT THAT EVENTUALLY ENDED UP PROVIDING ALMOST
19 NOTHING AT THE END.

20 Q. WHEN YOU SAY "PROVIDE ALMOST NOTHING", WHAT DO YOU
21 MEAN BY THAT?

22 A. NO MATERIAL WOULD ACTUALLY PERFORM AS IT WOULD NEED
23 TO PERFORM.

24 Q. IN YOUR OPINION DID THIS PATENT DISCLOSE OR CLAIM A
25 COMMERCIALLY Viable COATING?

1 A. NOT IN MY OPINION, NO.

2 Q. AND HOW -- JUST DID YOU -- HOW DOES THIS PATENT
3 COMPARE TO OTHER PATENTS, FOR EXAMPLE, THAT
4 SHERWIN-WILLIAMS --

5 COURT REPORTER: COULD YOU REPEAT THAT.

6 Q. HOW DOES THIS PATENT OWNED BY COCA-COLA COMPARE TO
7 PATENTS THAT SHERWIN-WILLIAMS HAS IN THE FIELD OF
8 COATINGS?

9 A. SO OUR PATENTS ARE VERY FOCUSED ON GENERATING, YOU
10 KNOW, THE ABILITY TO PRACTICE IN A SPECIFIC AREA, AND
11 THERE'S, YOU KNOW, THERE'S A CERTAIN AMOUNT OF BREADTH TO
12 THEM, BUT NOT TO THE EXTENT THAT THIS ONE HAS, AND THERE
13 ARE MANY CLAIMS THAT ARE VALUABLE TO US FROM AN
14 INTELLECTUAL PROPERTY STANDPOINT.

15 Q. AND NOW JUST TO SUMMARIZE SOME OF YOUR OPINIONS,
16 GIVEN THE VALUABLE TRADE SECRET INFORMATION THAT WE
17 DISCUSSED, WHAT WOULD BE THE VALUE TO A WOULD-BE
18 COMPETITOR OF HAVING THE SECRET RECIPES FROM
19 SHERWIN-WILLIAMS THAT WE REVIEWED?

20 A. SO IT WOULD ALLOW THEM TO SHORT-CUT YEARS AND YEARS
21 OF RESEARCH AND THE MONEY THAT'S ASSOCIATED WITH THAT. IT
22 WOULD INDICATE TO THEM EXACTLY THE PATHWAY THAT THEY
23 NEEDED TO FOLLOW TO HAVE A COMMERCIAL PRODUCT IN A VERY
24 SHORT PERIOD OF TIME.

25 Q. WHAT WORK WOULD REMAIN FOR SOMEONE WHO STOLE THIS

1 INFORMATION TO GET TO A COMMERCIAL PRODUCT?

2 A. THEY WOULD HAVE TO FIGURE OUT, IN SOME CASES LIKE,
3 FOR INSTANCE, THE ACRYLIC IS NOT SPECIFIC, IT'S DESCRIBED
4 AS AN ACRYLIC RESIN, HOWEVER, IN SOME OTHER PIECES OF THIS
5 INFORMATION THE ACRYLIC IS ACTUALLY EXPLICITLY DESCRIBED;
6 SO THEN IT COMES DOWN TO A COUPLE OF EXPERIMENTS TO SEE
7 HOW WOULD THAT ACRYLIC, FOR INSTANCE, BE PUT TOGETHER, IS
8 IT STARTED OFF WITH ONE MONOMER OR TWO MONOMERS, DO YOU
9 START WITH A WHOLE POLYMER OR DO YOU START WITH A RANDOM
10 COPOLYMER, AND SO THOSE QUESTIONS CAN BE RAPIDLY ANSWERED
11 AND, AND END UP WITH A FINAL FORMULA.

12 Q. AND WOULD THAT WOULD-BE COMPETITOR HAVE TO FIGURE
13 OUT HOW TO SCALE UP MANUFACTURING TO MANUFACTURE A COATING
14 AT SCALE?

15 A. YES.

16 Q. WOULD IT BE HELPFUL IN DOING THAT TO HAVE A COMPANY
17 LIKE METLAC JOIN YOUR TEAM?

18 A. YES.

19 Q. NOW, ONCE A COMPETITOR OR WOULD-BE COMPETITOR
20 DEVELOPED A NEW COATING AND SCALED IT UP, WOULD THEY BE
21 ABLE TO COMPETE GLOBALLY IN THE COATINGS MARKETPLACE?

22 A. YES.

23 Q. WOULD THEY BE ABLE TO TAKE AWAY MARKET SHARE FROM
24 SHERWIN-WILLIAMS?

25 A. YES.

1 Q. WOULD THEY POTENTIALLY BE ABLE TO SELL THEIR COATING
2 MORE CHEAPLY THAN SHERWIN-WILLIAMS?

3 A. YES, BECAUSE --

4 Q. HOW COME?

5 A. -- THEY DIDN'T HAVE THE UP-FRONT COSTS.

6 Q. NOW I WANT TO ASK YOU A HYPOTHETICAL QUESTION. IF
7 YOU HAD ACCESS TO A LARGE CHEMICAL MANUFACTURER FOR RAW
8 MATERIALS, YOU HAD SOME SEED FUNDING OF SEVERAL MILLION
9 DOLLARS AND A LABORATORY WITH ALL THE RELEVANT LAB
10 EQUIPMENT AND THEN YOU ADDED IN SHERWIN-WILLIAMS' SECRET
11 RECIPES AND POTENTIALLY A MID-SIZED FORMULATOR LIKE
12 METLAC, WHAT WOULD YOU BE ABLE TO DO WITH ALL OF THAT?

13 A. WELL, YOU'D BE ABLE TO RAPIDLY ENTER THE MARKET WITH
14 A PRODUCT THAT WOULD COMPETE AGAINST OUR MATERIAL.

15 MR. HUNTER: WOULD YOU PULL UP WHAT'S BEEN
16 PREVIOUSLY MARKED AS EXHIBIT 8B AND ADMITTED AS 8B.

17 Q. CAN YOU JUST READ THE TITLE OF THIS DOCUMENT,
18 MR. MALLEN?

19 A. THE NATIONAL THOUSAND TALENTS PROGRAM APPLICATION,
20 LONG-TERM PROGRAM FOR INNOVATIVE TALENTS-ENTERPRISE.

21 Q. AND WHOSE NAME IS ON THIS DOCUMENT?

22 A. XIAORONG YU.

23 Q. WHAT ORGANIZATION IS REPRESENTED THERE?

24 A. THE WEIHAI JINHONG GROUP COMPANY, LIMITED.

25 MR. HUNTER: IF WE COULD SCROLL TO PAGE 14,

1 SECTION 4. JUST BLOW THAT UP.

2 Q. COULD YOU JUST READ THAT PARAGRAPH UP UNTIL THE LINE
3 I DREW THERE.

4 A. SO EXPECTED CONTRIBUTIONS. DOMESTIC MARKET SIZE IS
5 ESTIMATED TO BE APPROXIMATELY CHINESE 20 BILLION YUAN.
6 THE COMPANY WILL BUILD THE FIRST BPA NI, MEANING BISPHENOL
7 A NON-INTEENTIONALLY ADDED, COATING PRODUCTION LINE IN
8 CHINA WITH A PROJECTED INVESTMENT OF 180 MILLION JUAN AND
9 EXPECTED INDUSTRIAL PRODUCTION IN MAY OF 2020. ONCE
10 PRODUCTION IS UP AND RUNNING, PROMOTION WILL BE CARRIED
11 OUT NATIONWIDE WHILE COCA-COLA PRODUCT APPLICATIONS
12 CONTINUE TO BE FULFILLED.

13 Q. AND YOU CAN STOP RIGHT THERE. CAN YOU START READING
14 WHERE IT SAYS, EVERY EFFORT.

15 A. EVERY EFFORT WILL BE MADE TO BOOST PRODUCT PROMOTION
16 IN THE ASIA PACIFIC AND U.S. MARKETS AND ACHIEVE MORE THAN
17 80 MILLION U.S. DOLLARS IN ANNUAL EXPORT EARNINGS. UPON
18 ITS COMPLETION THE PROJECT IS ANTICIPATED TO BREAK THE
19 INTERNATIONAL MONOPOLY AND FILL THE GAP IN ASIA.

20 Q. YOU CAN STOP RIGHT THERE. IF SOMEONE WERE ABLE TO
21 ACHIEVE THOSE GOALS, WOULD THEY BE ABLE TO HARM
22 SHERWIN-WILLIAMS?

23 A. YES.

24 Q. WOULD THEY HARM OTHER COMPANIES IN THE FIELD LIKE
25 PPG, AKZO-NOBEL?

1 A. YES.

2 MR. HUNTER: IF YOU CAN SCROLL TO PAGE 18.

3 Q. COULD YOU READ THIS PARAGRAPH STARTING AT DR. YOU.

4 A. DR. YOU HAS APPLIED FOR 41 PATENTS AND PUBLISHED
5 MANY PAPERS IN WELL-KNOWN JOURNALS AND CONFERENCES
6 INTERNATIONALLY. THE BPANI COATING PRODUCT SHE HAS
7 DEVELOPED ARE CURRENTLY THE MOST ADVANCED PRODUCTS IN THE
8 WORLD AND ARE ALTERNATIVES FOR EXISTING INNER WALL
9 COATINGS. SHE IS BRINGING ALONG THIS TECHNOLOGY AS A PART
10 OF AN EXTENSIVE COOPERATION WITH OUR COMPANY. THE
11 IMPLEMENTATION OF THIS PROJECT WILL ADVANCE CURRENT
12 PACKAGING TECHNOLOGIES OF THE DOMESTIC FOOD AND BEVERAGE
13 INDUSTRY AS A WHOLE AND ENSURE THAT RELATED CHINESE
14 INDUSTRIES WILL NOT BE PUT UNDER A BLOCKADE BY GREEN AND
15 TECHNICAL INTERNATIONAL TRADE BARRIERS, AVERTING HUGE
16 ECONOMIC LOSSES FOR ITS MANUFACTURERS. IN VIEW OF THESE
17 FACTS, THE COMPANY RECOMMENDS THE SELECTION OF DR. YOU
18 XIAORONG BY THE THOUSAND TALENTS PROGRAM.

19 Q. MR. MALLEN, TO THE BEST OF YOUR KNOWLEDGE HAS
20 DR. YOU DEVELOPED ANY BPANI COATING PRODUCTS?

21 A. NO.

22 Q. HAS SHE DEVELOPED ANY THAT ARE THE MOST ADVANCED
23 PRODUCTS IN THE WORLD?

24 A. NO.

25 Q. HAS SHERWIN-WILLIAMS DEVELOPED SOME BPANI COATINGS

1 PRODUCTS THAT ARE AMONG THE MOST ADVANCED IN THE WORLD?

2 A. YES.

3 MR. HUNTER: FINALLY, CAN WE PULL UP THE ELMO.

4 Q. I JUST WANT TO CONFIRM THE DOCUMENTS THAT YOU
5 RECEIVED FROM THE FBI AND ARE REPRESENTED AS FOUND ON THE
6 DEFENDANT'S HARD DRIVE THAT YOU TESTIFIED ARE
7 SHERWIN-WILLIAMS' TRADE SECRETS ARE EXHIBITS 28A, 28B,
8 28C, 28E, WHICH IS AN ATTACHMENT TO EXHIBIT 28D, AND
9 INFORMATION FOUND IN EXHIBIT 8F; IS THAT CORRECT?

10 A. YES.

11 MR. HUNTER: NO FURTHER QUESTIONS AT THIS
12 TIME.

13 THE COURT: ALL RIGHT. CROSS EXAMINATION.

14 MR. SHIPLEY: YOUR HONOR, BEFORE I BEGIN, WOULD
15 THE COURT LIKE ME TO REACH A STOPPING POINT SOMETIME
16 BEFORE 12:30?

17 THE COURT: AROUND 12:30, YES.

18 MR. SHIPLEY: THANK YOU.

19 CROSS EXAMINATION

20 BY MR. SHIPLEY:

21 Q. MR. MALLEN, GOOD MORNING, OR I GUESS I SHOULD SAY
22 GOOD AFTERNOON.

23 A. GOOD AFTERNOON.

24 Q. I'M COREY SHIPLEY, AND I'M ONE OF DR. YOU'S
25 ATTORNEYS IN THIS CASE.

1 LET'S BEGIN BEFORE WE BREAK FOR LUNCH TO TALK A
2 LITTLE BIT ABOUT, I THINK YOU CAN AGREE WITH ME THAT
3 YOU'RE HERE TODAY CLAIMING THAT DR. YOU HAS MISAPPRO-
4 PRIATED OR TAKEN MATERIAL FROM YOUR COMPANY; IS THAT
5 RIGHT?

6 A. YES.

7 Q. AND AS OF TODAY -- WHAT DID YOU SAY YOUR COMPANY'S
8 ANNUAL REVENUE IS, HOW MANY BILLION, 118?

9 A. EIGHTEEN BILLION.

10 Q. EIGHTEEN BILLION. AND FROM THE TIME THAT MOST OF
11 THE STUFF WE'VE TESTIFIED TO OR YOU'VE TESTIFIED TO TODAY,
12 HAS YOUR COMPANY BEEN, HAVE YOU SEEN ANY DROP IN REVENUE
13 FROM LACK OF MARKET SHARE WHEN IT COMES TO CAN COATING?

14 MR. HUNTER: OBJECTION, YOUR HONOR, RELEVANCE.
15 THE DEFENDANT WAS CAUGHT BEFORE SHE COULD PUT HER
16 SCHEME --

17 THE COURT: I'M NOT SURE IT HAS ANY RELEVANCE,
18 BUT I'LL LET HIM ANSWER. IT MIGHT HAVE SOME REMOTE
19 RELEVANCE.

20 SO THE QUESTION IS, MR. MALLEN, HAS
21 SHERWIN-WILLIAMS SEEN ANY DROP IN ITS REVENUES SINCE, SAY,
22 2017, GLOBAL REVENUE IN THE COATING FIELD?

23 A. I WOULD SAY THAT WE HAVE SEEN NEGATIVE IMPACTS IN
24 TERMS OF REVENUE GROWTH AND, IN CERTAIN AREAS, YES.

25 BY MR. SHIPLEY:

1 Q. AS YOU SIT HERE TODAY AS FAR AS THE MATERIAL THAT
2 YOU TESTIFIED TO HERE TODAY THAT MR. HUNTER PUT UP ON THE
3 ELMO THAT YOU'VE IDENTIFIED AS TRADE SECRETS --

4 A. YES.

5 Q. -- YOU DON'T HAVE ANY INFORMATION THAT ANY OF THOSE
6 MATERIALS HAVE EVER BEEN GIVEN TO ANYBODY; DO YOU?

7 A. COULD YOU REPEAT THE QUESTION, PLEASE.

8 Q. AS YOU SIT HERE TODAY, THOSE DOCUMENTS THAT
9 MR. HUNTER PUT ON THE ELMO HERE --

10 A. YES.

11 Q. -- THE PROJECTOR, AS YOU SIT HERE TODAY, YOU HAVE NO
12 INFORMATION THAT THOSE DOCUMENTS HAVE EVER GONE ANYWHERE;
13 DO YOU?

14 MR. HUNTER: OBJECTION, YOUR HONOR, SAME
15 OBJECTION. THE DEFENDANT WAS CAUGHT BEFORE --

16 THE COURT: IT'S HER ATTEMPT THAT'S IMPORTANT
17 HERE, MR. SHIPLEY. I DON'T BELIEVE THAT IS RELEVANT.
18 SUSTAINED.

19 MR. SHIPLEY: YOUR HONOR, I'LL SWITCH GEARS.

20 Q. MR. MALLEN, WHO IS TERESA MCGRATH AND BOB ISRAEL?

21 A. SO TERESA MCGRATH WAS A, WELL, STILL IS, SORRY, IS A
22 TOXICOLOGIST, AND BOB ISRAEL WAS THE VICE-PRESIDENT OF
23 REGULATORY AFFAIRS FOR VALSPAR, BOTH OF WHICH WORKED IN
24 THE MINNEAPOLIS OFFICE. TERESA HAS SINCE LEFT OUR COMPANY
25 AND WORKS FOR A ARCHITECTURAL PRODUCTS COMPANY.

1 Q. AND YOU AS THE, THE VICE-PRESIDENT OF COMPLIANCE AND
2 TECHNICAL MARKETING, DO YOU SEE WHAT ARTICLES ARE
3 PUBLISHED THAT COME OUT OF YOUR COMPANY IN PERIODICALS,
4 MAGAZINES, NEWSPAPERS?

5 A. SOMETIMES I DO.

6 Q. WOULD IT, WOULD IT SURPRISE YOU THAT AS EARLY AS
7 2017 ARTICLES, OR THOSE TWO INDIVIDUALS THAT YOU JUST
8 IDENTIFIED HAVE PUBLISHED INFORMATION STATING THAT THIS
9 V70 FORMULA AND OTHER OF THIS VALPURE FORMULA SHOULDN'T
10 EVEN BE CONSIDERED A TRADE SECRET?

11 A. IT WAS BROUGHT TO MY ATTENTION THAT THEY HAD
12 PRESENTED SOME INFORMATION TO AN ORGANIZATION CALLED GREEN
13 BIZ ABOUT, SPECIFICALLY ABOUT A PHENOLIC THAT WE'RE USING
14 FOR NON-BPA AND THE EPOXY RESIN THAT'S MADE FROM IT, BUT
15 NO OTHER COMPONENTS OF ANY OF THOSE COATINGS, WHICH NOT
16 EVEN THEY HAD ACCESS TO.

17 MR. SHIPLEY: NOW, COULD WE JUST GO FOR THE
18 WITNESS ONLY, PLEASE.

19 PULL UP EXHIBIT 77, PLEASE.

20 Q. MR. MALLEN, DO YOU RECOGNIZE THAT ARTICLE?

21 A. YES.

22 Q. AND IS THAT AN ARTICLE AT THE TOP UP THERE THAT'S
23 FROM MS. MCGRATH AND BOB ISRAEL?

24 A. YES.

25 MR. SHIPLEY: YOUR HONOR, AT THIS TIME I'D LIKE

1 TO PUBLISH THIS TO THE JURY, DEFENSE EXHIBIT NUMBER 77.

2 THE COURT: ALL RIGHT. IT'S ADMITTED, IT'S
3 NUMBER 77, AND LET IT BE PUBLISHED.

4 Q. AND LET'S -- IF YOU COULD GO TO THE TOP OF PAGE 2,
5 PLEASE. MR. MALLEN, COULD YOU READ FOR THE JURY THE
6 SECOND PARAGRAPH THERE WHERE IT STARTS "TO DEVELOP".

7 A. TO DEVELOP THIS INNOVATIVE TECHNICAL SOLUTION,
8 VALSPAR ENGAGED IN A HOLISTIC STRATEGY PARTNERING WITH A
9 RANGE OF NGOS, ACADEMICS, TOXICOLOGISTS AND BRAND OWNERS,
10 FOLLOWING THIS WITH EXTENSIVE TESTING AND UNCONVENTIONAL
11 COMMUNICATION STRATEGY.

12 Q. AND WHAT'S THAT REFER TO?

13 A. SO THAT REFERS TO, AGAIN, THE BISPHENOL FOR THE
14 VALPURE V70 NON-BPA EPOXY, ALL OF THE TOXICOLOGY TESTING,
15 ALL OF THE CONSULTATION ON THAT MATERIAL WITH EXPERTS IN
16 THE FIELD, SO THAT WAS OUR OUTREACH PROCESS IS WHAT
17 THEY'RE TALKING ABOUT.

18 Q. NOW, DURING THAT OUTREACH PROCESS FROM ALL THOSE
19 PEOPLE, IS THAT SOMETHING THAT YOU WOULD TYPICALLY, AS WE
20 DISCUSSED IN THE EXHIBIT 5 SERIES EARLIER TODAY, IS THAT
21 SOMETHING THAT YOU WOULD HAVE THEM SIGN A NON-DISCLOSURE
22 AGREEMENT?

23 A. NO.

24 Q. ALL RIGHT, BECAUSE IF YOU LOOK ON PAGE 3, IF YOU
25 COULD JUST READ THE, THE PARAGRAPH BEGINNING "EMBRACING

1 TRANSPARENCY".

2 A. EMBRACING TRANSPARENCY. LAST, RATHER THAN CLAIM
3 THIS NEW MOLECULE AND COATING AS TRADE SECRET, VALSPAR
4 THOROUGHLY PROTECTED THE INTELLECTUAL PROPERTY WHICH
5 INCLUDES 49 PATENTS. THIS ALLOWED US TO INVITE THE PUBLIC
6 TO REVIEW THE DATA THEMSELVES BY MAKING THE V70 POLYMER
7 CHEMICAL IDENTITY AND HAZARD DATA PUBLICLY AVAILABLE ON
8 VALSPAR'S WEBSITE.

9 Q. AND LET'S GO BACK TO PAGE 2. NOW, I'LL TALK WITH
10 YOU MORE ABOUT THIS AFTER LUNCH, BUT WE'VE TALKED A LOT
11 ABOUT MONOMERS TODAY; IS THAT RIGHT?

12 A. A LITTLE BIT.

13 Q. OKAY. AND ONE OF THOSE MONOMERS THAT WE'VE TALKED
14 ABOUT IS THIS TETRAMETHYL BISPHENOL F?

15 A. CORRECT.

16 Q. AND IF YOU LOOK AT THE, JUST IN GENERAL ON THAT
17 PAGE, YOU CAN HAVE TIME TO READ IT IF YOU'D LIKE, BUT
18 THERE IS A LOT OF INFORMATION ON THAT PAGE DISCUSSING THAT
19 TETRAMETHYL BISPHENOL F; ISN'T THERE?

20 A. YEAH, AND THAT'S BY DESIGN.

21 Q. OKAY, AND AS A -- AND AS THIS, YOU WOULD AGREE WITH
22 ME THAT THAT IS A -- HOW WOULD YOU DESCRIBE THAT AS A --
23 WE'VE TALKED ABOUT MONOMERS AND POLYMERS AND CROSS-LINKING
24 AGENTS, HOW WOULD YOU DESCRIBE THAT, WHAT'S THAT REFER
25 TO?

1 A. TMBPF ACTUALLY ISN'T A MONOMER THE WAY WE USE IT,
2 IT'S A PRECURSOR TO A MONOMER THAT WE USE.

3 Q. OKAY, AND AS FAR AS THAT TMBPF, THAT'S ONE OF THE
4 COMPONENTS IN SOME OF THESE DOCUMENTS THAT YOU HAVE SAID
5 ARE TRADE SECRETS TODAY; IS THAT RIGHT?

6 A. THAT'S A COMPONENT OF THE EPOXY.

7 Q. A COMPONENT, A LARGE COMPONENT, IN TWO OF THESE
8 DOCUMENTS THAT YOU CLAIM TO BE A TRADE SECRET TODAY?

9 A. IT'S, IT'S A, IT'S A WAY TO GET TO MAKE AN EPOXY
10 RESIN WITHOUT USING BPA, AND THEN THERE'S A LOT OF OTHER
11 MATERIALS WHICH ARE NEEDED IN ORDER TO BE ABLE TO MAKE IT
12 PERFORM.

13 Q. SO LET'S JUST, SINCE I MAY NOT HAVE ASKED A GOOD
14 QUESTION THERE, BUT LET'S, LET'S, YOU KNOW, WHEN WE'RE
15 TALKING ABOUT 23A, 23B THAT HAVE BEEN ADMITTED, WE'VE GOT
16 TMBPF-DGE XXXXXXXXXXXXXXXX, OR IS THAT ONE OF THE --

17 COURT REPORTER: COULD YOU REPEAT, YOU SAID THE
18 TMBPF, AND THEN I DIDN'T UNDERSTAND YOU AFTER THAT.

19 MR. SHIPLEY: ALL RIGHT, MS. BRADLEY.

20 Q. XXXXXXXXXXXXXXXXXXXXXXX, IS THAT THE CORRECT NUMBER?

21 A. YEAH; IF IT'S ON THAT PAGE, YES.

22 Q. AND THAT'S ONE OF THE LARGEST PORTIONS OF THE
23 COMPOSITION OF THAT --

24 MR. HUNTER: OBJECTION, YOUR HONOR. CAN WE
25 SIDE BAR, PLEASE?

1 THE COURT: ALL RIGHT.

2 (SIDE BAR CONFERENCE)

3 THE COURT: I SHOW EVERYBODY CONNECTED AT THIS
4 POINT. CAN YOU HEAR ME?

5 MR. SHIPLEY: YES, YOUR HONOR.

6 THE COURT: ALL RIGHT. MR. HUNTER, WHAT'S THE
7 ISSUE?

8 MR. HUNTER: YOUR HONOR, MR. SHIPLEY IS
9 REFERRING TO PRECISE AMOUNTS OF INGREDIENTS AND
10 PERCENTAGES THAT THE WITNESS JUST TESTIFIED ARE TRADE
11 SECRETS, AND WE WOULD PREFER THAT HE REFER TO THOSE IN
12 MORE GENERAL FASHION RATHER THAN THE EXACT NUMBERS.

13 THE COURT: MR. SHIPLEY, ARE YOU SUGGESTING
14 THESE NUMBERS ARE IN THIS ARTICLE?

15 MR. SHIPLEY: NO, YOUR HONOR, THAT'S NOT WHAT I
16 WAS SUGGESTING AT ALL. I'M JUST SUGGESTING THAT TALKING
17 ABOUT THE -- ONE OF THE COMPOSITION ELEMENTS WAS LISTED IN
18 THE ARTICLE AND DESCRIBED IN THE ARTICLE AND IS A HUGE
19 PORTION OF THE COMPOSITION OF THE ALLEGED TRADE SECRET,
20 AND I DON'T HAVE ANY PROBLEM WITH NOT REFERRING TO THE
21 NUMBERS.

22 THE COURT: ALL RIGHT. I THINK YOU CAN DO ALL
23 THAT WITHOUT REFERRING TO THE NUMBER.

24 DOES THAT COVER YOUR OBJECTION, MR. HUNTER?

25 MR. HUNTER: YEAH, I THINK SO. IF HE NEEDS TO

1 PULL UP A DOCUMENT THAT'S ONE OF OUR EXHIBITS AND HOLD IT
2 UP AND POINT TO A NUMBER AND JUST SAY, THIS NUMBER RIGHT
3 HERE, THAT'S FINE.

4 THE COURT: ALL RIGHT. THANK YOU.

5 (END OF SIDE BAR)

6 THE COURT: MR. SHIPLEY, YOU CAN CONTINUE.

7 MR. SHIPLEY: THANK YOU, SIR.

8 BY MR. SHIPLEY:

9 Q. MR. MALLEN, I'M GOING TO SWITCH GEARS A BIT AND TALK
10 TO YOU A LITTLE BIT ABOUT SOME OF THE TESTIMONY THAT
11 YOU'VE TALKED ABOUT EARLIER ABOUT YOUR EXPERIENCE SPEAKING
12 WITH DR. YOU AND COCA-COLA. I BELIEVE YOU DESCRIBED
13 EARLIER AS HER BEING AGGRESSIVE OR HER BEING, EXCUSE ME,
14 HER JUST WANTING MORE INFORMATION, IS THAT RIGHT, FROM
15 YOU?

16 A. I POSSIBLY SAID, YOU KNOW, DEMANDING IN AN AREA
17 WHICH WAS INCONSISTENT WITH THE ROLE OF HER POSITION.

18 Q. NOW, AS FAR AS THE ROLE OF HER POSITION, THAT ROLE
19 WOULD BE DEFINED BY COCA-COLA; WOULDN'T IT?

20 A. IT, IT WOULD.

21 Q. SO WITH REGARD TO HER BEING, WITH REGARD TO HER
22 WANTING ADDITIONAL INFORMATION, THAT'S SOMETHING THAT SOME
23 OF THESE COMPANIES THAT YOU'RE SUBMITTING THIS, THESE
24 FORMULAS TO, SO THOSE COMPANIES NEED INFORMATION; WOULDN'T
25 YOU AGREE WITH THAT?

1 A. WHEN WE CONTACTED OTHER PEOPLE WITHIN COCA-COLA AND
2 ASKED THEM IF SHE NEEDED THIS INFORMATION, THEY TOLD US
3 NO.

4 Q. BUT ONE OF HER SUPERVISORS, ONE OF HER SUPERVISORS I
5 THINK YOU SAID EARLIER WAS, WAS THREATENING YOU; IS THAT
6 RIGHT?

7 A. NO, SHE WASN'T THREATENING US, SHE WAS SUPPORTING
8 SHANNON IN HER DEMANDS.

9 Q. OKAY. SO JUST FOR THE SAKE OF ARGUMENT, YOU'RE
10 SAYING THAT DR. YOU WAS THREATENING, AS YOU SAY, AND HER
11 SUPERVISOR IS SUPPORTING THAT, ISN'T THAT PERSON ADOPTED,
12 IN ESSENCE, JUST DOING THE SAME THING?

13 A. BUT I WOULD SAY FROM A STEP BACK. IN OTHER WORDS,
14 SHE --

15 Q. FROM A HIGHER POSITION; RIGHT?

16 A. A HIGHER POSITION AND IN THE BACKGROUND.

17 Q. FROM A HIGHER POSITION AT COCA-COLA; RIGHT?

18 A. YES.

19 Q. HOW FAMILIAR ARE YOU WITH THE SUBSTANCE OF, OF
20 PATENTS REGARDING SOME OF THESE MONOMERS AND OTHER, OTHER
21 INGREDIENTS TO THESE RECIPES, HOW FAMILIAR ARE YOU WITH --
22 I KNOW WE'VE TALKED ABOUT ONE PATENT, HOW FAMILIAR ARE YOU
23 WITH JUST PATENTS IN GENERAL?

24 A. I'M RELATIVELY FAMILIAR WITH THE PATENTS IN OUR
25 FIELD.

1 MR. SHIPLEY: NOW, IF WE CAN BRING UP EXHIBIT
2 NUMBER 71, I BELIEVE.

3 THE CLERK: WITNESS ONLY?

4 MR. SHIPLEY: YES, WITNESS ONLY. I'M SORRY,
5 MS. HOPSON.

6 Q. NOW, MR. MALLEN, DO YOU RECOGNIZE THIS PATENT?

7 A. I BELIEVE SO.

8 Q. HAVE YOU READ THIS PATENT BEFORE?

9 A. I BELIEVE SO.

10 MR. SHIPLEY: YOUR HONOR, AT THIS TIME I'D LIKE
11 TO ADMIT AND PUBLISH EXHIBIT NUMBER 71.

12 THE COURT: ANY OBJECTION?

13 MR. HUNTER: NO OBJECTION.

14 THE COURT: ALL RIGHT. DEFENSE EXHIBIT NUMBER
15 71 IS ADMITTED, AND IT MAY BE PUBLISHED.

16 Q. NOW, IF I WERE TO TELL YOU THAT MANY OF THESE
17 COMPOSITIONS AND MANY OF THIS, MUCH OF THIS INFORMATION
18 THAT YOU'VE TESTIFIED TO HERE TODAY IS FOUND WITHIN THIS
19 PATENT, WOULD YOU AGREE WITH ME?

20 A. NOT THE SPECIFIC COMMERCIALLY AVAILABLE MATERIAL
21 BECAUSE THIS WAS AS OF 2009, FILED IN 2005, FINAL FORMULA
22 WASN'T EVEN SET YET.

23 Q. SO -- BUT WHAT WAS? IF YOU'RE SAYING THE FINAL
24 FORMULA WASN'T SET, WAS IT STARTING SOME OF THAT RESEARCH
25 AND DEVELOPMENT THAT WAS PUT IN HERE?

1 A. THE BASE POLYMER WAS, WAS DISCLOSED IN HERE, BUT NOT
2 ALL OF THE OTHER INGREDIENTS.

3 Q. SO THE BASE POLYMER, SO THAT WOULD BE IMPORTANT
4 RESEARCH FOR ONE TO KNOW WHEN GETTING A PATENT ON
5 SOMETHING; WOULDN'T IT?

6 A. OH, YEAH.

7 Q. SO -- AND WHAT AMOUNT OF MONEY DID YOU SAY EARLIER
8 THAT YOUR COMPANY HAS SPENT ON R&D, EXCUSE ME, RESEARCH
9 AND DEVELOPMENT TO CREATE THIS RECIPE?

10 A. NOT JUST THIS RECIPE, BUT THE WHOLE PORTFOLIO OF
11 NON-BPA PRODUCTS.

12 Q. SO BY DISCLOSING, WHAT YOU'RE SAYING BY DISCLOSING A
13 POLYMER, WHICH TYPE OF POLYMER TO USE IN THIS PATENT, THAT
14 WOULD REDUCE THAT AMOUNT OF MONEY THAT YOU'RE TALKING
15 ABOUT; WOULDN'T IT?

16 A. NO, BECAUSE IT STILL DOESN'T WORK AS A COATING UNTIL
17 MANY YEARS OF DEVELOPMENT LATER.

18 Q. BUT IT'S AN INGREDIENT THOUGH IN THE COATING?

19 A. IT'S ONE INGREDIENT.

20 Q. RIGHT. SO YOU HAVE TO DECIDE WHICH INGREDIENT TO
21 USE?

22 A. WE HAVE TO DECIDE WHICH -- IN PATENTING WE HAVE TO
23 DECIDE WHICH AREA OF TECHNOLOGY WE NEED TO CLAIM IN ORDER
24 TO BE ABLE TO MOVE FORWARD IN THE DEVELOPMENT OF THIS, OF
25 THIS MATERIAL.

1 Q. BUT AS FAR AS PICKING THE TYPE OF POLYMER THAT ONE
2 WOULD USE IN THIS, ISN'T THAT -- DOESN'T THAT TAKE
3 SIGNIFICANT RESEARCH AND DEVELOPMENT TO DECIDE WHICH
4 POLYMER YOU WANT TO USE?

5 A. SURE, YES.

6 Q. AND YOU'RE SAYING THAT BY THAT ALONE, BY PICKING THE
7 POLYMER TO USE, THAT WOULDN'T HAVE ANY EFFECT ON WHAT YOU
8 SAID EARLIER ABOUT HOW MUCH MONEY IS SPENT FOR RESEARCH
9 AND DEVELOPMENT, IS THAT WHAT YOU'RE TELLING THE JURY?

10 A. CAN YOU REASK THE QUESTION OR RESTATE IT?

11 Q. WELL, LET'S START OVER. I ASKED YOU EARLIER ABOUT
12 YOU SAID A CERTAIN AMOUNT THAT YOUR COMPANY VALSPAR HAS
13 SPENT ON RESEARCH AND DEVELOPMENT?

14 A. YES.

15 Q. RIGHT. THEN I WENT AND ASKED YOU ABOUT, I THINK YOU
16 TESTIFIED EARLIER THAT ONE OF THE POLYMERS AND FOR THE
17 RECIPE WAS DISCLOSED IN THIS PATENT; IS THAT RIGHT? ARE
18 WE ON THE SAME PAGE?

19 A. IT'S, IT'S DISCLOSED IN A WAY THAT WOULD MAKE IT
20 VERY DIFFICULT FOR SOMEONE TO KNOW THAT IS AN ACTUAL
21 MATERIAL IN THE COMPOSITION.

22 Q. DISCLOSED IN A WAY THAT WOULD MAKE IT VERY DIFFICULT
23 FOR SOMEONE TO KNOW, SO IS IT DISCLOSED OR NOT DISCLOSED?

24 A. IT'S, IT'S DISCLOSED IF YOU UNDERSTAND WHAT PORTION
25 OF IT IS DISCLOSED IN ONE AREA AND WHAT PORTION IS

1 DISCLOSED IN ANOTHER AREA, AND THEN TO BRING THOSE
2 TOGETHER IT WOULD TAKE A LOT OF RESEARCH TO FIGURE OUT
3 FROM ALL OF THOSE OPTIONS HOW IT WOULD, HOW -- WHAT YOU
4 WOULD NEED TO DO IN ORDER TO GET IT TO WORK.

5 Q. SO THE PROCESS AS YOU'RE TELLING ME RIGHT NOW AND
6 YOU'RE TELLING THE JURY IS A PROCESS OF SOMETHING THAT YOU
7 CAN GO AND FIND IT, AND YOU MAY HAVE TO WORK A LITTLE
8 HARDER TO GET IT, BUT YOU CAN FIND IT BECAUSE IT'S
9 PUBLICLY AVAILABLE?

10 A. FOR THIS POLYMER.

11 Q. SO YOU CAN FIND THE POLYMER IN THIS PATENT?

12 A. NOT EXPLICITLY, BUT PIECES OF IT THAT COME TOGETHER
13 AS A PUZZLE.

14 Q. SO, SO PUTTING THAT PIECE -- SO LET'S JUST SAY THAT
15 HYPOTHETICALLY, MR. MALLEN, YOU'VE GOT A PIECE OF THE
16 PUZZLE OVER HERE ON PAGE 1, YOU'VE GOT A PIECE OF THE
17 PUZZLE ON PAGE 8, YOU'VE GOT A PIECE OF THE PUZZLE ON PAGE
18 20, ARE YOU TELLING ME YOU CAN'T PUT THOSE TOGETHER?

19 A. AND THEN WHAT YOU HAVE TO DO IS YOU HAVE TO HAVE THE
20 OTHER PIECES --

21 Q. CAN YOU PUT THOSE TOGETHER?

22 THE COURT: LET HIM ANSWER THE QUESTION,
23 MR. SHIPLEY.

24 A. AND THEN WITH ALL OF THOSE VARIABLES, YOU HAVE TO
25 ADD VARIABLES THAT AREN'T EVEN DISCUSSED IN THIS PATENT IN

1 ORDER TO SEE WHETHER ANYTHING ACTUALLY WORKS OR NOT, DOES
2 IT SPRAY, DOES IT HOLD, DOES IT ADHERE TO THE METAL, DOES
3 IT HOLD THE PRODUCT, DOES IT LAST ON THE SHELF FOR A YEAR,
4 OR DOES IT SCAVENGE THE FLAVOR, ALL OF THOSE THINGS HAVE
5 TO COME TOGETHER.

6 MR. SHIPLEY: YOUR HONOR, I THINK I MAY BE
7 MOVING ONTO A DIFFERENT SUBJECT IF THE COURT WOULD LIKE TO
8 PAUSE.

9 THE COURT: ALL RIGHT. THIS IS PROBABLY A GOOD
10 TIME TO BREAK FOR LUNCH.

11 LADIES AND GENTLEMEN, I DON'T KNOW HOW LONG IT
12 TOOK YOU ANY OTHER DAY THIS WEEK, BUT IF WE COULD RESUME
13 IN ABOUT AN HOUR, IT WOULD HELP US TRY TO GET YOU OUT OF
14 HERE A LITTLE BIT EARLY THIS AFTERNOON. WE HAVE ONE MORE
15 WITNESS AFTER MR. MALLEN; SO IF YOU CAN BE BACK IN ABOUT
16 50 MINUTES OR SO SO THAT WE CAN START RIGHT AROUND 1:30,
17 IT WOULD BE HELPFUL; BUT I DON'T WANT ANYBODY TAKING ANY
18 RISKS OR GET A SPEEDING TICKET OR ANYTHING LIKE THAT
19 TRYING TO DO THAT. I GUESS WHAT I'M SAYING IS GET BACK AS
20 SOON AS YOU CAN, AND IF YOU'RE HERE AND IF WE'RE READY, WE
21 CAN TRY TO GET STARTED BACK AT 1:30 AND TRY TO MOVE ON
22 THROUGH THIS SO THAT WE CAN RECESS TODAY A LITTLE BIT
23 EARLIER THAN USUAL.

24 PLEASE REMEMBER MY INSTRUCTIONS ABOUT YOUR
25 CONDUCT AS JURORS. YOU ARE NOT TO DISCUSS THIS CASE WITH

1 ANYONE NOR ARE YOU TO PERMIT ANYONE TO DISCUSS THE CASE
2 WITH YOU. DO NOT ALLOW ANYONE TO DISCUSS THE CASE IN YOUR
3 PRESENCE. DO NOT READ OR LISTEN TO ANYTHING TOUCHING ON
4 THIS CASE IN ANY WAY. DO NOT DO ANY RESEARCH OR
5 INVESTIGATION ABOUT THE CASE ON YOUR OWN, AND, VERY
6 IMPORTANTLY, KEEP AN OPEN MIND ABOUT THE ISSUES IN THE
7 CASE UNTIL YOU HAVE HEARD ALL THAT THERE IS TO HEAR AND
8 YOU RETIRE TO THE JURY ROOM TO DELIBERATE YOUR VERDICT.

9 ALL RIGHT. I'LL SEE YOU AS CLOSE TO 1:30 AS WE
10 CAN GET STARTED.

11 (JURY NOT PRESENT)

12 THE COURT: ALL RIGHT. LET'S TRY TO START BACK
13 AROUND 1:30.

14 (RECESS AT 12:34 P.M., UNTIL 1:42 P.M.)

15 (JURY NOT PRESENT)

16 THE COURT: ALL RIGHT. IT LOOKS LIKE WE'RE
17 READY FOR THE JURY.

18 (JURY PRESENT)

19 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, I
20 HOPE YOU ENJOYED YOUR LUNCH. WE'RE READY TO GET BACK TO
21 WORK.

22 MR. SHIPLEY, CONTINUE WITH YOUR CROSS
23 EXAMINATION.

24 MR. SHIPLEY: THANK YOU, JUDGE.
25 BY MR. SHIPLEY:

1 Q. NOW, MR. MALLEN, COULD YOU EXPLAIN A LITTLE BIT IN
2 DETAIL ABOUT A NOTICE, A 287 NOTICE FOR PATENTS, COULD YOU
3 TALK A LITTLE BIT ABOUT THAT, PLEASE?

4 A. I DON'T KNOW WHAT THAT IS.

5 Q. SO AS FAR AS, YOU KNOW, WE TALKED A LITTLE BIT
6 EARLIER ABOUT YOUR FAMILIARITY WITH PATENTS, BUT AS FAR AS
7 HAVING A 287 NOTICE, DO YOU KNOW IF THAT'S A REQUIREMENT
8 OR NOT WHEN FILING A PATENT?

9 A. NO, I DON'T.

10 Q. AND I THINK ONE OF THE, YOU KNOW, ONE OF THE
11 PRODUCTS THAT WE'VE BEEN TALKING ABOUT HERE TODAY IS YOUR
12 COMPANY'S, I THINK IT'S V40; IS THAT RIGHT?

13 A. CORRECT.

14 Q. AND WOULD IT SURPRISE YOU TO KNOW THAT ON ONE OF
15 THESE 287 NOTICES THAT THIS V40, THE PROCESS IS LISTED ON
16 THAT 287 NOTICE AS PUBLICLY AVAILABLE?

17 A. I DON'T KNOW WHAT IT IS.

18 Q. NOW, SPEAKING OF THE PATENT I'M JUST TALKING
19 ABOUT -- WOULD YOU PULL UP EXHIBIT NUMBER 71. NOW, WOULD
20 YOU AGREE WITH ME THAT THIS PATENT HERE, THAT YOU CAN MAKE
21 A COMMERCIAL PRODUCT WITH THIS PATENT?

22 A. WITH THOUSANDS OF VARIABLES I WOULD SAY THAT YOU
23 COULD GET VERY CLOSE, HOWEVER, I'LL ANSWER THAT BECAUSE
24 THE V40Q SYSTEM YOU'RE TALKING ABOUT EXISTS RIGHT NOW IN
25 ABOUT 13 DIFFERENT VARIANTS, ALL OF WHICH HAVE BEEN

1 DEVELOPED LONG AFTER THIS PATENT WAS PUT IN FORCE.

2 Q. SO IF YOU WILL, IF YOU'LL LOOK WITH ME, LET'S GO
3 OVER IT A LITTLE BIT. WITH REGARD TO -- NOW, I'LL BACK UP
4 A SECOND. SO DID YOU SAY YOU CAN MAKE A COMMERCIAL
5 PRODUCT WITH THIS, THIS PATENT?

6 A. IF YOU WORK THROUGH THOUSANDS, MAYBE EVEN TENS OF
7 THOUSANDS OF VARIATIONS.

8 Q. SO, I MEAN, SO THIS IS -- SO THIS PATENT HERE, IT
9 DESCRIBES A PROCESS; IS THAT RIGHT?

10 A. YES.

11 Q. SO IF YOU'LL LOOK WITH ME AND JUST MAKE SURE I'M
12 READING THIS CORRECTLY ON 21, IF YOU'LL LOOK AT -- IF
13 YOU'LL LOOK AT THIS CHART RIGHT HERE WHEN WE TALK ABOUT
14 THE PROCESS, WOULD YOU DESCRIBE, WOULD YOU AGREE WITH ME
15 THAT THESE RIGHT HERE ARE COMPONENTS THAT WOULD GO INTO
16 THIS FORMULA?

17 A. IN THE 40Q60 -- THIS IS NOT THE ACTUAL FORMULA.

18 Q. NO, I'M ASKING, THIS IS, BASICALLY THIS WOULD BE,
19 THIS WOULD BE WHERE TO BUY THIS STUFF; IS THAT RIGHT?

20 A. I'M SORRY?

21 Q. WHERE TO BUY -- LET ME BACK UP A SECOND. ON THE
22 LEFT SIDE OVER HERE IT SAYS, CHEMICAL NAME, SO THESE ARE
23 SOME COMPONENTS IN THIS FORMULA; CORRECT?

24 A. SOME OF THEM ARE, YES.

25 Q. SO RAW MATERIALS; FAIR ENOUGH?

1 A. SOME OF THEM ARE RAW MATERIALS.

2 Q. AND WHAT THIS DOES OVER HERE, IF YOU LOOK OVER HERE
3 IN THIS COLUMN, IT SHOWS YOU WHERE TO BUY IT; IS THAT
4 RIGHT?

5 A. IT SHOWS YOU AN OPTION AT THAT TIME, YES.

6 Q. OKAY, AND THEN IF YOU TURN OVER TO, AND I'M TALKING
7 ABOUT THE PROCESS, SO IF YOU TURN OVER TO PAGE 23, WHAT
8 YOU LOOK AT HERE IS THAT IN EXAMPLE 1, IT ACTUALLY SAYS,
9 THE PREPARATION OF THE ACID AND THE ACRYLIC, THAT'S RIGHT,
10 ISN'T IT, SO IT ACTUALLY TELLS YOU THROUGH THESE
11 PARAGRAPHS HOW TO MAKE THE ACID AND THE ACRYLIC?

12 A. IT TELLS YOU HOW TO MAKE AN ACID FUNCTIONAL ACRYLIC,
13 NOT NECESSARILY THE FUNCTIONAL, ACID FUNCTIONAL ACRYLIC.

14 Q. OKAY, AND GOING BACK TO THESE Q40 PRODUCTS THAT
15 WE'RE TALKING ABOUT AND -- WELL, STRIKE THAT, I'M NOT
16 GOING TO GET INTO 287 ANYMORE.

17 GOING AND CHANGING GEARS A BIT TALKING ABOUT
18 TESTING, WOULD IT BE YOUR TESTIMONY THAT CERTAIN, CERTAIN
19 TESTING CAN BE CONSIDERED TRADE SECRET?

20 A. CERTAIN TESTING AND THE WAY IT'S APPLIED AND THE WAY
21 IT'S INTERPRETED AND THE RESULTS ARE CONSIDERED TRADE
22 SECRET, YES.

23 Q. SO HOW DO YOU -- HOW DOES ONE DO THAT, HOW DOES YOUR
24 COMPANY DO THAT AS FAR AS THE MANNER AND THE WAY -- THE
25 MANNER IN WHICH SOMETHING IS TESTED, DO YOU JUST SEND IT

1 TO THESE COMPANIES FOR TESTING?

2 A. SOMETIMES WE SEND IT OUT TO COMPANIES FOR TESTING,
3 OTHER -- BUT MAINLY WE TEST IN-HOUSE.

4 Q. MAINLY YOU TEST IN-HOUSE, BUT SOME PRODUCTS YOU DO
5 SEND OUT?

6 A. YES.

7 Q. NOW, ARE YOU AWARE OF THE AMERICAN SOCIETY FOR
8 TESTING AND MATERIALS?

9 A. YES.

10 Q. OKAY. NOW, WHAT IS THAT? WOULD YOU EXPLAIN THAT TO
11 THE JURY.

12 A. IT'S A -- ASTM IS A STANDARD FOR CERTAIN TESTS THAT
13 HAVE BEEN VALIDATED THROUGH MULTIPLE LABORATORIES AND HAVE
14 BEEN PUBLISHED SO THAT THE INDUSTRY OR ANYONE CAN USE
15 THOSE AS STANDARD TEST METHODS.

16 Q. NOW, DO YOU USE THEM?

17 A. SURE.

18 Q. OKAY. AND WITH REGARD TO PRODUCTS THAT WE'VE TALKED
19 TODAY ABOUT, V40 AND V70, DO YOU USE THE ASTM TO TEST
20 THOSE PRODUCTS?

21 A. WE USE A FEW, YES.

22 Q. AND CAN ANYONE SUBMIT MATERIAL TO THAT ORGANIZATION
23 FOR TESTING?

24 A. SO I DON'T BELIEVE THAT ORGANIZATION DOES ANY
25 TESTING, PER SE. THEY SET THE STANDARDS FOR THE TESTING,

1 BUT YOU CAN SEND IT OUT AND SPECIFY TO THE TESTING
2 CONTRACT LAB THAT WE WANT THIS DONE, WE WANT THIS TESTED
3 ACCORDING TO ASTM 95C OR WHATEVER IT IS.

4 Q. AND TELL ME ABOUT THOSE RESULTS FROM THOSE TESTING,
5 DO YOU SEND OUT NON-DISCLOSURE AGREEMENTS WITH THEM ON THE
6 FINDINGS, OR, YOU KNOW, CAN ANYONE JUST SUBMIT ANY TESTING
7 MATERIAL?

8 A. WE -- ANY CONTRACT RESEARCH ORGANIZATION HAS TO SIGN
9 A NON-DISCLOSURE STATEMENT IN ORDER TO RECEIVE OUR
10 BUSINESS.

11 Q. AND I WANT TO DRAW YOUR ATTENTION TO EXHIBIT 28A
12 THAT'S ALREADY BEEN ADMITTED.

13 MAY I HAVE A MOMENT, YOUR HONOR?

14 THE COURT: YOU MAY.

15 Q. NOW, WITHOUT GETTING INTO THE INTRICACIES OF WHAT'S
16 LISTED HERE, ARE THOSE ACTUAL INGREDIENTS? YOU CALLED
17 THIS A RECIPE, SO ARE THOSE ACTUAL INGREDIENTS?

18 A. SO --

19 Q. OR ARE THEY A TYPE OF INGREDIENT?

20 A. THEY ARE -- SO, FOR INSTANCE, IT SAYS, TMBPF-DGE.
21 THAT IS A, A RESIN, AND IT IS REACTIVE WITH PARTS OF WHAT
22 THE REST OF THIS MATERIAL IS.

23 Q. SO, AND DESCRIBE TO THIS JURY WHAT IS THE IMPORTANCE
24 OF A CAS NUMBER?

25 A. IT'S A, AN INDEX NUMBER THAT IDENTIFIES A PARTICULAR

1 CHEMICAL OR IN SOME CASES A CHEMICAL CLASS.

2 Q. SO --

3 A. IT STANDS FOR CHEMICAL ABSTRACT SERVICE.

4 Q. SO GOING DOWN, I THINK YOU SAID THE FIRST INGREDIENT
5 THERE, DID YOU SAY THAT THAT WAS AN INGREDIENT OR TYPE OF
6 INGREDIENT?

7 A. IT WOULD BE AN INGREDIENT THAT IS, IS REACTIVE WITH
8 A FORM OF POLYMER.

9 Q. NOW, GOING DOWN, YOU SEE WHERE IT SAYS, I GUESS,
10 ONE, TWO, THREE, THE THIRD ONE?

11 A. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

12 Q. SO WHEN WE TALK ABOUT THAT, DOES THAT HAVE A CAS
13 NUMBER?

14 A. IT DEPENDS, SOMETIMES THEY DO AND SOMETIMES THEY
15 DON'T.

16 Q. FOURTH ONE DOWN, DOES IT HAVE A CAS NUMBER?

17 A. NO, THAT'S A TYPE OF A, A CHEMICAL.

18 Q. NOW, COULD A SKILLED CHEMIST REPRODUCE WHAT WE SEE
19 HERE, COULD THEY REPRODUCE V70 FROM JUST THIS EXHIBIT
20 HERE?

21 A. YOU COULD GET VERY, VERY CLOSE.

22 Q. BECAUSE I THINK YOU'VE ALREADY STATED THAT IT'S A
23 PROCESS; ISN'T IT?

24 A. THERE'S A PROCESS INVOLVED.

25 Q. RIGHT. AND THE PROCESS IS IMPORTANT; ISN'T IT?

1 A. YES.

2 Q. BECAUSE THE PROCESS IS, IS THAT WE'VE GOT XXXXXXXXX
3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX INGREDIENTS IN THIS,
4 BUT YOU CAN'T JUST PUT ALL THOSE INGREDIENTS IN AT ONE
5 TIME; CAN YOU?

6 A. SOME CHEMISTS WOULD. IT DOESN'T WORK THAT WAY WITH
7 THIS. SO, FOR INSTANCE, THIS EXPLAINS THAT THERE'S AN
8 XXXXXXXXXXXXXXXXXXXXXXXX, THE QUESTION SOMEONE WOULD
9 HAVE TO ANSWER IS, WELL, HOW DOES THAT GET PUT TOGETHER.

10 Q. SO JUST TO MAKE SURE WE'RE CLEAR, YOU SAID THAT SOME
11 CHEMISTS WOULD, BUT YOU DON'T WITH THIS; IS THAT RIGHT?

12 A. CORRECT.

13 Q. SO THE PROCESS ON THIS RIGHT HERE REGARDING THE
14 ORDER, IT'S IMPORTANT WHICH INGREDIENT GOES IN FIRST?

15 A. AND THAT'S WHY IT'S A TRADE SECRET.

16 Q. BUT MY QUESTION IS IS IT IMPORTANT WHICH ONES GOES
17 IN FIRST?

18 A. WHICH ONE GOES IN FIRST?

19 Q. YES.

20 A. WHICH ONE OF THESE INGREDIENTS GOES IN FIRST?

21 Q. YES, SIR.

22 A. SO THE TMBPF-DGE AND THE HYDRO -- WELL --

23 Q. WELL, AS FAR AS THE ORDER, I MEAN, I'M NOT ASKING
24 YOU ABOUT THE ORDER, MR. MALLEN, AND I THINK THAT THE
25 GOVERNMENT PROBABLY WOULD OPPOSE THAT ABOUT THE ORDER,

1 WHAT I'M ASKING IS, IS JUST IT'S IMPORTANT TO KNOW WHAT
2 THE PROCESS IS AND WHICH INGREDIENT TO PUT IN AT WHICH
3 PARTICULAR TIME?

4 A. OH, ABSOLUTELY.

5 MR. SHIPLEY: OKAY. YOUR HONOR, MAY I HAVE
6 JUST A MOMENT, PLEASE?

7 THE COURT: YOU MAY.

8 MR. SHIPLEY: YOUR HONOR, NO FURTHER QUESTIONS.
9 THANK YOU, SIR.

10 THANK YOU, MR. MALLEN.

11 A. THANK YOU, SIR.

12 THE COURT: ALL RIGHT, MR. HUNTER, YOU MAY
13 REDIRECT.

14 MR. HUNTER: THANK YOU, YOUR HONOR.

15 PULL UP EXHIBIT 28A, PLEASE, IF YOU WOULD.

16 REDIRECT EXAMINATION

17 BY MR. HUNTER:

18 Q. MR. MALLEN, YOU REMEMBER THIS DOCUMENT?

19 A. YES.

20 Q. YOU SAID THIS WAS A TRADE SECRET?

21 A. YES.

22 Q. NOW, WE JUST LOOKED AT SOME PATENTS, DO YOU REMEMBER
23 THAT?

24 A. YES.

25 Q. ANYWHERE IN THOSE PATENTS DID YOU SEE THIS

1 INGREDIENT LISTED AT 21.7 PERCENT?

2 A. NO.

3 Q. DID YOU SEE THE NEXT INGREDIENT LISTED XXXXXX
4 XXXXXXX?

5 A. NO.

6 Q. DID YOU SEE THE NEXT INGREDIENT LISTED AT XXX
7 XXXXXXX?

8 A. NO.

9 Q. DID YOU SEE THE NEXT INGREDIENT LISTED AT X
10 XXXXXXX?

11 A. NO.

12 Q. DID YOU SEE THE NEXT INGREDIENT AND ITS
13 PERCENTAGE?

14 A. NO.

15 Q. HOW ABOUT WATER AND ITS PERCENTAGE?

16 A. NO.

17 Q. HOW ABOUT ORGANIC SOLVENTS AND ITS PERCENTAGE?

18 A. NO.

19 Q. WE TALKED BRIEFLY ABOUT ASTM TESTS, DO YOU REMEMBER
20 THAT?

21 A. YES.

22 Q. I'LL SHOW YOU DEMONSTRATIVE EXHIBIT 35.

23 IF WE COULD SWITCH TO THE ELMO.

24 NOW, YOU TESTIFIED THAT EXHIBITS 28A, B, C,
25 28E, WHICH WAS AN ATTACHMENT TO EXHIBIT 28D, AND 8F WERE

1 SHERWIN-WILLIAMS TRADE SECRETS; CORRECT?

2 A. YES.

3 Q. WERE ANY OF THOSE ASTM TESTS?

4 A. NO.

5 Q. I'D LIKE TO SHOW YOU WHAT THE DEFENSE MARKED AS
6 EXHIBIT 77. DO YOU REMEMBER THIS?

7 A. YES.

8 Q. WHO ARE THE, WHO ARE THE AUTHORS OF THIS ARTICLE?

9 A. TERESA MCGRATH IS A TOXICOLOGIST WHO WORKED FOR
10 VALSPAR IN THE MINNEAPOLIS OFFICE IN THE REGULATORY
11 AFFAIRS GROUP AND BOB ISRAEL WAS THE VICE-PRESIDENT OF
12 THAT REGULATORY AFFAIRS GROUP.

13 Q. DO THEY STILL WORK FOR SHERWIN-WILLIAMS?

14 A. TERESA DOES NOT. BOB ISRAEL DOES.

15 Q. LET'S GO TO PAGE 3 OF THIS DOCUMENT. SEE WHERE IT
16 SAYS, LAST, RATHER THAN CLAIM THIS NEW MOLECULE AND
17 COATING AS TRADE SECRET, VALSPAR THOROUGHLY PROTECTED THE
18 INTELLECTUAL PROPERTY WHICH INCLUDES 49 PATENTS. IS IT
19 TRUE AS STATED HERE THAT VALSPAR DOESN'T USE TRADE SECRETS
20 TO PROTECT THESE COATINGS?

21 A. NO.

22 Q. WHY DON'T THESE PEOPLE KNOW THAT, THEY WORK AT
23 SHERWIN-WILLIAMS; RIGHT?

24 A. CORRECT. THEY DO NOT HAVE INTIMATE KNOWLEDGE OF THE
25 PACKAGING BUSINESS AND THE PACKAGING METHOD OF PROTECTING

1 ITS INTELLECTUAL PROPERTY.

2 Q. DO THEY EVEN KNOW THAT THOSE EXHIBITS WE JUST
3 REVIEWED AND YOU TESTIFIED WERE TRADE SECRETS EXIST?

4 A. NO.

5 Q. SO THOSE TRADE SECRETS ARE SO SECRET THAT THOSE
6 OTHER SHERWIN-WILLIAMS EMPLOYEES WHO PUBLISHED THIS
7 ARTICLE AND SAID SHERWIN-WILLIAMS DOESN'T USE TRADE
8 SECRETS, THEY DON'T EVEN KNOW THAT THOSE TRADE SECRETS
9 EXIST?

10 A. CORRECT.

11 Q. AND ONE OF THEM IS STILL A SHERWIN-WILLIAMS
12 EMPLOYEE; CORRECT?

13 A. YES.

14 MR. HUNTER: NO FURTHER QUESTIONS, YOUR
15 HONOR.

16 THE COURT: ANY RECROSS ON THOSE SUBJECTS, MR.
17 SHIPLEY?

18 MR. SHIPLEY: YES, YOUR HONOR.

19 RECROSS EXAMINATION

20 BY MR. SHIPLEY:

21 Q. YOU SAID THOSE TWO INDIVIDUALS, ARE YOU A HIGHER UP
22 EMPLOYEE THAN THOSE INDIVIDUALS?

23 A. I'M AT THE SAME LEVEL AS BOB ISRAEL RIGHT NOW.

24 Q. SO WERE THOSE, WERE THOSE EMPLOYEES -- I MEAN, ARE
25 YOU INSINUATING THAT WHAT WAS STATED IN THAT PARAGRAPH

1 MR. HUNTER JUST READ TO YOU, THAT THAT'S FALSE?

2 A. SO IT'S PARTIALLY TRUE IN THAT WE CHOSE NOT TO
3 MAINTAIN THE, THE MONOMER THAT WE TALKED ABOUT, THE TMBPF,
4 THE PRECURSOR, THE TMBPF-DGE, AND THE COMONOMER AS, TO
5 MAKE THE EPOXY RESIN AS A TRADE SECRET, THAT WAS AN
6 INTENTIONAL POSITION AND POSTURE ON OUR PART TO MAKE SURE
7 THAT PEOPLE WERE AWARE OF THIS MATERIAL AND HOW SAFE IT
8 WAS AND THAT THEY DIDN'T FEEL LIKE THEY WERE BEING
9 DECEIVED OR UNCOMFORTABLE USING IT. THE REST OF THE
10 COATING, AS I'VE SAID BEFORE, IS HIGHLY TRADE SECRET
11 BASED.

12 Q. NOW, YOU SAID PARTIALLY TRUE, DID I HEAR YOU SAY
13 THAT?

14 A. YES.

15 Q. JUST BY SIMPLE, I'M GOING TO CALL IT MATH, JUST BY
16 WHAT MAKES SENSE, I GUESS IT'S PARTIALLY TRUE, SO IT'S GOT
17 TO BE PARTIALLY FALSE, DO YOU AGREE WITH THAT?

18 A. LIKE I SAID, IT WAS PARTIALLY TRUE BECAUSE THEY SAID
19 THAT THE, THE POLYMER AND THE BISPHENOL WERE NOT GOING TO
20 BE KEPT AS TRADE SECRETS.

21 Q. SO --

22 A. THE FALSE PART WAS THE COATING.

23 Q. IF SOMETHING IS PARTIALLY TRUE, IT MEANS IT'S EITHER
24 PARTIALLY FALSE OR IT'S NOT FULLY TRUE; FAIR ENOUGH?

25 A. NO. THE FIRST PART --

1 Q. SO WHAT --

2 THE COURT: BOTH OF YOU CAN'T TALK AT ONCE.

3 ASK YOUR QUESTION AGAIN, MR. SHIPLEY.

4 Q. SO IF SOMETHING IS PARTIALLY TRUE, THAT WOULD MEAN
5 THAT IT'S NOT FULLY TRUE; RIGHT?

6 A. CORRECT.

7 Q. SO SOMETHING IS MISSING FROM THAT; RIGHT?

8 A. CORRECT.

9 Q. SO, I MEAN, IS SHERWIN-WILLIAMS IN THE BUSINESS OF
10 SENDING ARTICLES OUT THAT ARE JUST PARTIALLY TRUE?

11 MR. HUNTER: OBJECTION, YOUR HONOR, MISSTATES
12 THE TESTIMONY.

13 MR. SHIPLEY: WITHDRAW. NO FURTHER QUESTIONS.

14 THE COURT: ALL RIGHT. MR. MALLEN, THANK YOU
15 VERY MUCH. YOU MAY BE EXCUSED.

16 A. THANK YOU, YOUR HONOR.

17 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
18 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

19

20 KAREN J. BRADLEY/S
21 SIGNATURE OF COURT REPORTER

04/17/2021
DATE

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